

PUBLIC LAW BOARD NO. 1844

AWARD NO. 21

CASE NO. 23

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline assessed against Mr. W. L. Wolfe (30 days suspension and demotion from foreman to trackman) was excessive, unwarranted and wholly disproportionate to the alleged offense (Carrier's File D-11-16A-112).
- (2) Claimant Wolfe's seniority as foreman be restored and that he be allowed the difference between the maintenance gang foreman rate and the trackman rate of pay for all time worked as a trackman subsequent to his demotion."

OPINION OF BOARD:

This case involves a 30-day suspension and the demotion from Track Foreman to Trackman of Mr. W. L. Wolfe following an investigation into charges contained in a Notice of Investigation dated June 23, 1976, reading in pertinent part as follows:

"Your responsibility for not directing your crew in an efficient manner which, therefore, resulted in your crew's not performing their duties in a productive, alert and attentive manner, on June 3, 1976, while you were employed as Foreman at Valentine, Nebraska, Job No. 001."

Evidence adduced at the hearing, including a minute-by-minute observation of Claimant's work crew on June 3, 1976, by Carrier police officers as well as by frank admissions by Claimant demonstrate that he permitted his gang to take

excessive breaks on that day. Specifically, the record indicates that Claimant and his crew performed less than four hours of actual track work during the eight-hour shift. Claimant occupied a position of responsibility and was himself largely unsupervised in the field. By his failure to himself perform and to make sure his men performed a full day's work for a full day's pay, he abused the trust and authority which Carrier placed in him. There is no question that Claimant was liable for discipline but the issue remains whether the penalty imposed is inappropriately severe in light of the circumstances.

The penalty imposed upon Claimant for his misconduct was a 30-day suspension without pay as well as a presumably permanent demotion from Track Foreman to Trackman. In assessing the appropriateness of this penalty the two primary considerations are the nature of the offense and the past record of the employee. Clearly, Claimant did engage in culpable dereliction of duty which cannot and should not be condoned. Carrier is entitled both by economics and equity to receive a full day's work for a full day's pay. The responsibility to adhere to this basic maxim is particularly strong where the employee involved is a supervisor who is expected both to set an example by his own behavior and to efficiently direct and control the men working under him. Balanced against one day's serious transgression, however, are 32 years of exemplary service, 16 of those years as a Foreman. (During initial handling Carrier asserted that Claimant had received two "letters of reprimand" in February, 1974, relative to handling of his crews. The Organization objected that letters of reprimand are not "discipline" for purposes of subsequent determination of the appropriate quantum to be imposed for later misconduct. At our Board hearing Carrier withdrew all arguments based upon the letters of reprimand and stipulated that the imposition of discipline in this case was based solely upon the nature of Claimant's misconduct on June 3, 1976. In light of these

developments we have no need to reach, and express no opinion upon, the question of whether letters of reprimand may be appropriately considered as discipline when reviewing an employee's record.)

We do not downplay the seriousness of Claimant's dereliction of duty on June 3, 1976, but we must conclude that the penalty of 30 days' suspension plus demotion was excessive and unreasonable under the circumstances. So far as the record shows, he was an employee with 32 years of unblemished service, during 16 of which he served Carrier as Foreman. There is no suggestion in the record of incorrigibility or refusal to respond to progressive discipline since this is Claimant's first offense. Reason does not support a conclusion that a man who has given 16 years of satisfactory service as a Foreman is incapable of doing so in the future. We are not prepared to accept the Organization's analogy between demotion and dismissal but we are persuaded that the permanent stigma and loss of income associated with demotion was not warranted in this case. Thirty days' suspension was appropriate but the demotion in addition was excessive and accordingly we shall sustain the claim.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

AWARD

Claim sustained. Carrier is directed to comply with this Award within 30 days of issuance.

  
Dana E. Elschen, Chairman

  
O. M. Berge, Employee Member

  
R. W. Schaege, Carrier Member

Dated: April 11, 1978