

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That discipline assessed Foreman D. S. Barber was without just and sufficient cause and on the basis of improper charges. (Carrier's File D-11-3-342)
2. Foreman D. S. Barber shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD:

On December 18, 1980, the Claimant was directed to attend an investigation on the following charge:

"Your responsibility in connection with failure to properly perform your duties as Foreman of the 4-R Crossing Gang and to follow instructions given to you at approximately 9:00 AM when on December 15, 1980, you and your gang were observed at 1:30 PM at MP 147 with insufficient tools and having performed no work as directed."

The hearing was held on December 29, 1980. Subsequent to the hearing, the Carrier imposed a ten-day actual suspension which activated a 20-day deferred suspension in addition to the forfeiture of his Foreman and Assistant Foreman seniority rights.

On the day in question, the Foreman's gang of nine employees were instructed to dig out a road crossing. The instructions were given sometime between 9:00 AM and 10:30 AM depending on whose version is believed. It is undisputed that at approximately 1:30 PM the Claimant and his gang were observed at the crossing with only one pick and one shovel. It is further undisputed that this was an

insufficient number of tools for a gang of this size. Nor is it disputed that as a result the project took far more time than normal.

The Carrier argues that the evidence more than adequately establishes that the Claimant failed to properly exercise his responsibility as a Foreman. His failure, it is argued, resulted in a significant loss of productivity and caused a considerable delay in the work project. The evidence, suggests the Carrier, clearly establishes a violation of Rule 1233 which reads as follows:

"They will direct and be responsible for the work and training of employees under their supervision. They must see that these employees perform their duties in a safe and efficient manner. They must keep the records and make the prescribed reports of the time of their employees, and of the receipt, use, recovery or transfer of material."

It is contended that the discipline in light of these facts is warranted.

The Organization doesn't deny the basic facts but argues that the Foreman had no control over the fact his gang had insufficient tools and further that he had done everything possible to secure tools but was unable to. In this regard, they direct our attention to Claimant's testimony which indicated the truck in which the tools were located was stalled at another location with a dead battery and further that he had contacted two other Foremen who refused to loan his gang the necessary tools.

In reviewing the evidence, we find that some circumstances do mitigate the charge; however, not fully. In the final analysis, the Claimant is still ultimately responsible for the improper utilization of his gang. On the mitigating side there is the evidence that the truck with the tools was in another location and would not start and the fact that Claimant did contact two other Foremen

who were either unable or unwilling to provide tools. However, these facts do not mitigate the fact, as Claimant did not deny, that he could have called the project engineer or others to secure tools.

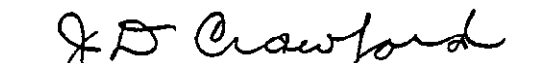
In reviewing whether the discipline assessed is appropriate for the offense and degree of guilt we find it is excessive. There is nothing excessive about the ten-day suspension. However, the Carrier has not presented any evidence to justify the permanent revocation of the Claimant's Assistant Foreman and Foreman rights. Poor judgment of the nature evidenced in this record is not enough to convince us that the Claimant is forever incapable of properly performing the duties of a Foreman. Therefore, the Carrier is directed to, within 30 days, reinstate the Claimant's former seniority rights as Foreman and Assistant Foreman.

AWARD

Claim sustained to the extent
indicated in the Opinion.



Gil Vernon, Chairman


J. D. Crawford, Carrier Member
H. G. Harper, Employee Member

Date: March 25, 1982