

AWARD NO. 4

CASE NO. 4

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Foreman J. L. Price for alleged failure to perform the duties of his assignment and falsification of daily work reports on August 3, 1979 was without just and sufficient cause and excessive (System File 24E-376).

(2) Foreman J. L. Price shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

The Claimant at the time of discipline was assigned as a Foreman and had approximately 14 years seniority.

On August 18, 1979, Mr. Price was directed to attend an investigation in connection with his "... responsibility for failure to perform the duties of your assignment as outlined by the Rules of the Transportation Company and falsifying of daily work reports on August 3, 1979." The investigation was held on August 24, 1979, and as a result the Claimant was dismissed September 4, 1979. On June 1, 1981, the Carrier and Organization agreed to reinstate the

Claimant as a Trackman without prejudice to his claim for backpay effective June 1, 1981. Essentially, the claim as the situation stands is for backpay for between September 4, 1979, and June 1, 1981, and for reinstatement of his seniority rights as a foreman.

The charges were in connection with his performance of his foreman duties on August 3, 1979. The Roadmaster in charge did not feel Mr. Price and his gang were performing their duties properly. In order to confirm or deny this suspicion the Roadmaster asked the Railroad police to conduct surveillance on the gang.

In the opinion of the Board the evidence gathered by the special agents was conclusive that the Claimant was guilty as charged. Their report details a story of loafing on company time the extent of which is deplorable. The crew had assigned hours of 7:30 a.m. to 4:00 p.m. The agents initiated their observation at 7:25 a.m. The crew, including the Claimant, sat around for approximately one hour. They then obtained coffee and proceeded to Sheridan, Missouri, where they drank coffee until 9:00 a.m. They then departed. The agents then found the crew again at 9:47 a.m. The two trackmen were working and the Claimant was observed sitting in the crew truck with his feet hanging out the window. The crew moved and their truck was found in front of a store in Athelstan, Missouri. After one of the crew members came out of the store, the crew moved to Sheridan then to Parnell for gasoline. The agents then found the crew at 12:44 p.m. back inside the Sheridan depot where they remained until 1:13 p.m. The crew then left for Ravenswood making one stop at a cafe. They

arrived at 1:40 p.m. The crew went to work cutting weeds while the Claimant left the job site on foot, walking toward some houses in the area. The trackmen were observed at 2:00 p.m. standing under a tree. One of the agents asked the crew where the foreman was and they replied that he usually spent his afternoons in the local cafe. At 2:40 p.m. the trackmen were observed reading magazines in the truck and the Claimant returned at 2:53 p.m. The crew then worked until 3:30 p.m.

The Claimant on his work report for the day indicated that the crew was working between 7:30 a.m. and 10:30 a.m. at milepost 121.8. Between 10:30 a.m. and 11:30 a.m., the crew reported working at milepost 124.9. They were reported on lunch break between 11:30 a.m. and 12:00 noon and working at milepost 102.2 between noon and 4:00 p.m.

In consideration that the Board believes that Mr. Price was guilty of a serious transgression of his responsibilities and the Carrier rules, backpay for the period of suspension would be inappropriate. Regarding whether the Claimant should have his foreman rights reinstated, we believe that this aspect of the penalty is neither arbitrary or capricious. Except under mitigated circumstances, the Carrier should not be forced to employ as a foreman a person who has so convincingly displayed himself as summarily lacking in the honesty and integrity necessary for such a position. In view that it was proved the Claimant was guilty of a serious offense, particularly for a supervisor, the Board will not substitute its judgement for that of the Carrier.

The question of whether Mr. Price will ever be permitted to exercise judgment as a foreman is at the discretion of the Carrier.

AWARD

Claim denied.

GIL VERNON

Gil Vernon, Chairman

H. G. Harper

H. G. Harper, Employee Member

J. D. Crawford

J. D. Crawford, Carrier Member

Date: Oct 26, 1987