

PUBLIC LAW BOARD NO. 2960

AWARD NO. 57

CASE NO. 77

PARTIES TO 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 disciplinary action of loss of track supervisor and foreman rights and thirty (30) days' deferred suspension assessed Claimant W. Marusiak was without just and sufficient cause and excessive. [Organization File 3D-2662; Carrier File D-11-1-474].

(2) Claimant W. Marusiak shall be allowed to return to his foreman position with all rights unimpaired and be compensated for all wage loss suffered."

OPINION OF THE BOARD:

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

On October 30, 1981, the Carrier directed the Claimant to attend an investigation. The letter read in pertinent part as follows:

"You are hereby directed to attend a formal Investigation as indicated below - Date, Friday, November 6, 1981. Time,

10:00 A.M.. Place, Office of Assistant Division Manager-Engineering, 325 Spencer Street, West Chicago, Illinois. Charge, Your responsibility for failure to properly perform your duties as Track Supervisor when repairing a broken angle bar on Track 3 between "JB" and "MI" on October 27, 1981. You may be accompanied by one or more persons and/or representatives of your own choosing subject to the provisions of applicable scheduled rules and agreements and you may if you so desire, produce witnesses in your own behalf without expense to the Transportation Company. Signed - B. A. Nelson, Roadmaster."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal before the Board.

A review of the evidence firmly establishes the Claimant's guilt. It is abundantly clear that he improperly repaired a broken angle bar on a 135-pound rail with a 115-pound bar. This is in violation of the applicable Federal Railroad Administration Rule which states:

"Each rail joint, insulated joint, compromise joint must be of the proper design and dimensions for the rail on which it is applied."

It is further clear that the proper angle bars were reasonably available at the time he affected the repair with the improper bar. Even assuming they weren't available, the Claimant clearly failed to report the discrepancy so it could have been remedied in a proper fashion.

With respect to the quantum of discipline the Organization argues it is excessive, especially in respect to the permanent revocation of his track foreman's seniority rights. They draw attention to evidence they presented on the property, which shows that on occasion, subsequent to the instant dispute, the Carrier utilized and paid the Claimant at the Foreman rate of pay.

The Carrier argued that, in view of the seriousness of the offenses, the discipline was appropriate. In their opinion this is magnified by the fact that the defect occurred in Suburban passenger territory. They also responded in their submission that any occasions on which the Carrier may have used the Claimant as a Foreman was merely a payroll error and thus, they do not judge this as prejudicial.

Due to the unique circumstances present in this case, the Board agrees with the Organization, to a certain extent, that permanent disqualification of the Claimant's rights as a Foreman is excessive. Although, we do not view the 30-day deferred suspension as unreasonable.

With respect to the Claimant's seniority rights as a Foreman, the Carrier claimed that the instances where the Claimant had been utilized as a Foreman were merely errors. However, when the Organization's allegations were made on the property the Carrier failed to respond. Therefore, this assertion must stand as fact. Certain reasonable inferences can be drawn from the Organization's assertion in this regard. First, it is easily presumed--in the absence of any contrary evidence--that it was at the Carrier's direction and with their approval that the Claimant worked as a Foreman. Next, it can be inferred that the Carrier by its own actions has no basis to question the basic long-term suitability of the Claimant for service as a Foreman.

The Board does agree with the Carrier however, that the offense in question was especially serious because it was passenger

territory. Therefore, we will direct the Carrier to reinstate the Claimant's original seniority rights as a Foreman, however, we will not direct the Carrier to compensate the Claimant for any lost wages. This should impress upon the Claimant the seriousness of his actions and the necessity of strict compliance with all rules, including those pertaining to track inspections and repairs.


AWARD: The Claim is sustained to the extent indicated in the opinion.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: _____

5-8-84