

PUBLIC LAW BOARD NO. 2960

AWARD NO. 66
CASE NO. 63

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The disciplinary demotion from B&B Foreman to Machine Operator of C. C. Brown for allegedly failing to economically perform his duties was without just and sufficient cause and based on conjecture and speculation. (Organization File 4D-1913; Carrier File D-11-3-356)

(2) B&B Foreman C. C. Brown shall be allowed the remedy prescribed in Rule 19(d) of the effective Agreement.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the 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 July 13, 1981, the Carrier directed the Claimant to attend an investigation. The letter read in pertinent part as follows:

"You will arrange to appear for hearing on Friday, July 17, 1981 which has been postponed and re-scheduled at the request of the Vice Chairman, BMW as indicated below:

"PLACE: B&B Office, Boone, Iowa
"DATE: Thursday, July 23, 1981
"TIME: 9:00 a.m.
"CHARGE: Your responsibility in connection with failure to economically perform the duties of your position as B&B Foreman in connection with work performed between May 18, 1981 and July 9, 1981 on the Marshalltown scale project.

"You may be accompanied by one or more persons of your own choosing subject to applicable rules of the Brotherhood of Maintenance of Way Employee's schedule, and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

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

Several Carrier witnesses at the investigation stated that 216 man hours was a reasonable estimate of time required to complete the job in question. The crew under the Claimant's direction, however, took 339 man hours to complete the job.

The Board is convinced that the Claimant took longer than necessary to complete the job. However, there is a certain amount of doubt in the record as to how much longer he took than was deemed "normal" by the Carrier. This doubt is based on the fact that the Carrier's benchmark of comparison was described as an estimate or average of how long it would take to complete the project. Thus, 216 hours is not a definite number of hours necessary to complete the job, but a number within a range of hours. The Board finds it significant that no Carrier Officials inspected the job until near its completion. Therefore, it cannot be determined that there weren't factors that would tend to cause the job to take somewhat longer than the average. Thus, it is quite possible that even under normal circumstances, the job could have taken more than 216 hours without being unreasonable.

Accordingly, while the Claimant took longer than he should have and thus, some discipline was appropriate, we can't determine that his failure to perform the job was as aggrievous or as dilatory to the degree contended by the Carrier. When this mitigating factor is taken into consideration with the Claimant's 36 years of unblemished service and the importance of the opportunity for advancement, it is difficult to conclude that permanent revocation of Foreman and Assistant Foreman rights is appropriate for a single instance of this nature.

In view of the foregoing, we will direct the Carrier to reinstate the Claimant's Foreman and Assistant Foreman rights. However, there will be no pay for time lost.

AWARD:

The Claim is sustained to the extent indicated in the Opinion. The Carrier is directed to comply within thirty (30) days.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: Sept 6, 1984