

PUBLIC LAW BOARD NUMBER 3530

Award Number: 69

Case Number: 69

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Extra Force Foreman T. C. Chafin, Box 61, Newtown, WV 25684, was assessed a disqualification as Foreman from March 29 - May 15, 1984, for unsatisfactory work. After investigation, Carrier requalified him as Foreman but did not compensate for time lost. Claim was handled in accordance with the Railway Labor Act and agreement provisions. Employees request pay for all lost time.

FINDINGS

Claimant was employed as an Extra Force Foreman. By letter dated March 30, 1984, Claimant was informed of his disqualification as Foreman because of unsatisfactory performance. The Organization subsequently requested a hearing on behalf of Claimant, which was held on April 25, 1984. By letter dated May 15, 1984, Claimant was informed of Carrier's decision to disqualify him as Foreman for the period of March 29, 1984 to May 15, 1984.

The issue to be decided in this dispute is whether Claimant was disqualified from the Foreman's position for just cause under the Agreement.

The Organization contends that Claimant's actions on March 12, 1984 did not warrant his disqualification. The Organization first argues that

Claimant did not delay the completion of work on that date as alleged by Roadmaster C. Gearheart. The Organization contends that Gearheart merely assumed that work would be delayed because Claimant had called and informed him that he had run out of gas. The Organization further contends that Claimant in fact did not cause any delay, and cites his testimony to verify that fact.

The Organization further maintains that Claimant was not guilty of violating Safety Rule 1202 on the date in question. The Organization argues that Claimant used good judgment in deciding to perform flagging duties rather than working with the rest of his crew. The Organization maintains that flagging was required in order to protect the equipment, and that Claimant's decision to do so was reasonable under the circumstances.

The Organization concludes that Carrier had no basis upon which to originally disqualify Claimant and cites Carrier's decision to reinstate Claimant to his position subsequent to investigation.

Carrier asserts that Claimant used poor judgment on March 12, 1984, by causing a work delay on his shift due to running out of gas on his way to work. Carrier cites the testimony of Gearheart that Claimant's actions caused a 30 minute delay on the date in question and argues that Claimant's irresponsibility was the sole cause for the delay. Carrier further contends that on that same date, Claimant violated Safety Rule 1202 by "stepping on a bar" while working on a cross tie.

Carrier further contends that on March 29, 1984, Claimant was not performing the duties to which he was assigned. Specifically, Carrier contends that Claimant's absence from the area where his crew was working, in order to perform flagging duties, indicates poor judgment on his part.

After review of the record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

Initially, we find that Carrier has adequately established the charge against Claimant. Regarding the events of March 12, 1984, we are unconvinced concerning Claimant's cause of work delay for his crew. Gearheart's opinion regarding the delay is merely that, an opinion. It is not supported by the amount of evidence necessary to sustain a charge. However, no question exists that Claimant acted irresponsibly and in violation of Safety Rule 1202 on the date in question. The testimony of Claimant and Foreman Harry confirms that the violation occurred.

Similarly, we find that Claimant used poor judgment in deciding to personally perform flagging duties instead of delegating such duties to other employees on March 29, 1984. The testimony of several witnesses indicates that under the circumstances at hand, Claimant should have been working in proximity to his crew rather than performing flagging duties.

Claimant, as Foreman, should have concerned himself with primary rather than secondary duties such as flagging, particularly with a full crew available. In sum, we find that Carrier acted within its discretion in determining that Claimant was unfit to perform Foreman's duties based on the incidents outlined above.

AWARD

Claim denied.

Nicholas Rymas
Neutral Member
W. L. Albman, Jr.
Carrier Member
Bruce S. Hall
Organization Member

DATE: 1-29-88