

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Seaboard System Railroad..

STATEMENT
OF
CLAIM:

1. The demotion of C. Johnson, Jr. as Class II Machine Operator was improper and without just cause.
2. Claimant Johnson be restored as a Class II Machine Operator.
3. Claimant Johnson be compensated for all monetary loss suffered from date of demotion.

FINDINGS:

Effective July 1, 1983, claimant was disqualified as a Machine Operator, after a hearing had been held in the matter, and not allowed to bid on a machine operator position for a period of at least one year. It is Petitioner's view that that decision must be reversed on two counts.

Petitioner's first point is that the hearing was scheduled in violation of Rule 39 of the applicable Agreement. The hearing was originally scheduled by letter dated May 26, 1983, for June 6, 1983. Rule 39 prescribes that the hearing "shall take place within ten calendar days after notice by either party." When

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Carrier realized that the hearing was scheduled to be held eleven days after notice thereof had been hand delivered to claimant, it notified claimant by telephone on June 1 that the hearing would be rescheduled for June 3, a Friday. It also notified claimant of the change by letter served personally on claimant on June 2.

No prejudicial error or rule violation was committed in these circumstances. The hearing was held within the ten-day time limit prescribed by Rule 39 and claimant as well as his representative were duly notified of the change. While one or two days notice of hearing might be insufficient in some situations, there is no indication here that Petitioner was not in a position to proceed with the hearing in this case. Claimant had been notified of the charges against him on May 26 and the hearing had to be held within ten days under the Rule's requirements.

Petitioner contends further that the discipline must be set aside on the merits of the case.

The incident that triggered off the discipline occurred on May 18, 1983. While claimant was operating Ballast Regulator No. 29, a mechanical malfunction in that equipment took place. Roadway Mechanic Skipper was called to the scene and, according to his testimony, determined that the equipment failure resulted from inadequate lubrication of the rear differential which caused severe overheating of its components. He testified that he found the gears discolored by heat and the machine had been operated without sufficient lubricants in the differential. According to Skipper, it is the operator's responsibility to keep the machine properly lubricated.

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The record does not establish that claimant lacked the necessary lubricants because of any fault on Carrier's part or that he sought in vain to obtain such supplies. Claimant's own testimony shows that he did not maintain proper lubrication of his equipment on a daily basis.

On this record, we find no ground for substituting our judgment for that of Carrier in this matter. Carrier's findings are based on substantial credible evidence as to specific facts. That claimant was well aware of the importance of keeping machines properly lubricated is well established by the record. There is no indication that any of the testimony on which Carrier relies or its decision to demote and restrict claimant was prompted by bias or any other improper consideration. In the light of this record, Carrier's decision is not unreasonable; it appears to have been carefully considered.

AWARD: Claim denied.

Adopted at Jacksonville, Florida, Dec. 19, 1985.


Harold M. Weston, Chairman


Carrier Member


Employee Member