

PUBLIC LAW BOARD NO. 4338

PARTIES: UNION PACIFIC RAILROAD COMPANY  
TO  
DISPUTED: BROTHERHOOD MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: (1) The discipline (30 demerits) assessed Extra Gang 7866 Foreman S. A. Sowa for alleged violation of various Company rules as indicated in Mr. P. M. Dannel's letter of December 4, 1987, was arbitrary, capricious and unwarranted.

(2) The claimant's record shall be cleared of the discipline referred to in Part (1).

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend a formal investigation in Los Angeles, California on November 16, 1987 to determine the responsibility, if any, of the claimant concerning charges that during the week of October 19, 1987 instructions which he was given by his supervisor to be completed during his supervisor's vacation were left unattended.

Pursuant to the investigation the claimant was found guilty of irresponsibility and was assessed thirty demerits for a violation of General Rules A, B, D, and 600 as indicated in Safety, Radio and General Rules for All Employees, Form 7908, effective April, 1985.

At the outset the Carrier introduced a transcript of the claimant's personal record. The Union objected, but the Carrier overruled the objection.

The Union also contended that the charges were not precise in nature and thus in violation of Agreement Rule 48(c). The Union alleges that the Carrier failed to notify the claimant which instructions he was given that were not followed, and thus the Union was unable to prepare a proper defense.

W. S. Oakden, Track Supervisor at Los Angeles, testified that he went on vacation the week of October 19 and gave the claimant a list of instructions which he wanted completed in order while he was on his week's vacation. He testified that when he returned, three of the items which he had instructed the claimant to perform had not been completed. He testified that his instructions were both written and verbal.

The Carrier introduced a copy of the written instructions as Carrier's Exhibit C. Mr. Oakden testified that Item No. 1 was to

pick up scrap ties and garbage, and this task was not completed. He testified that Item No. 2 was to put mile markers and quarter mile markers out, and this job was not completed. He testified that Item No. 5 was to broom No. 1 Track between yard switches, and this job was not completed.

Mr. Oakden also testified that Item No. 6 was to work in the Los Angeles Yard doing clean up of ties, OTM, panels; save rail on panels and put the rail at Spence; stack OTM out of the way; you need to talk to Lance George on Extension 2378 or regular mobile about clean up and Rollie about where he wants the panels; this needs to be done so NEOSHE can start their work, and such task was not completed.

Mr. Oakden further testified that Item No. 7 stated that if the foregoing items were completed, the claimant needed to go to Walnut and start building yard switches, and this task was not completed.

Mr. Oakden testified that regarding Item No. 5, brooming of No. 1 Track between yard switches, none of that work was started. He stated it might possibly take two days for the claimant's gang to complete that task.

Mr. Oakden testified that all the work he had directed the claimant to have the gang perform could have been completed in the one week he was away. He testified that the charges against the claimant were failure to pick up ties and trash, failure to install the mile and quarter mile markers, and failure to broom the track.

The Union contends that the evidence establishes that the jobs that were assigned to the claimant were not left unattended but were partially completed. On that basis the Union contends the evidence does not sustain the charge.

The claimant testified that he did not complete everything on the sheet which listed the assignments, but an honest attempt was made to complete everything assigned. The claimant testified that he left six ties for plowing and stated they would be considered scrap.

The claimant testified that they attempted to perform the job of putting up the mile and quarter mile markers, but they had improper posts and he decided to wait until they could get proper posts. He testified that he contacted Mr. Rollie Woods on October 10 and advised him what the problem was, and Mr. Woods told him to hold off until they could get the right posts.

In regard to Item No. 5, regarding the brooming of the Track between yards and switches, the claimant testified that he attempted to complete that job but could not obtain a safe operator for the ballast regulator. The claimant testified that in his judgment it would take approximately one and one-half hours for an operator to properly broom a track which was slightly over a mile long. He stated he was only at the job site on one day. He testified that he instructed his assistant foreman regarding what needed to be done.

The claimant testified that Jim Helfrich came by several times on the 19th and commented that they were doing a fantastic job in the yard. He also stated that Mr. George came through a couple of times, and he liked the way things were going in the yard during the week of October 19 through October 22. He stated that Mr. George's instructions would supercede Mr. Oakden's since Mr. George was the project engineer.

In reference to the instructions to regulate the ballast or broom the ballast in Track No. 1, the claimant stated that he talked to Mr. Mechie who advised: "Yes, we knew it was supposed to be done, but there was just no way to get to it with the operators and the machines we had to keep going."

Mr. Lance George, Manager of Special Projects, testified that the job of picking up scrap ties and garbage, identified as Item No. 1, was not completed, and he saw some trash laying around. He also stated that Item No. 2, which directed that mile markers and quarter mile markers be put up, was not completed. He testified that the claimant called him on the morning of the 19th and told him he did not have the quarter or three-quarter signs, but he had the half signs and the mile marker signs. He stated that he told claimant to go ahead and put up the ones he had, and the claimant advised him he would do so, but such was not done.

Mr. George also testified that the brooming of No. 1 Track involved only one-half mile. He stated that the claimant never came to him and requested an additional operator or any assistance in completing the job. Mr. George also stated that the gang attempted to do good honest work that week in the yard but did not do enough at the industry.

Mr. George testified that the tampers and machines were sitting out there because they didn't have a pump for fuel, and he and Mr. Helfrich were out there at approximately 10:30, and the machines had been sitting all morning, and they were just standing around and said they were out of fuel and didn't have a pump.

Mr. George admitted that Mr. Helfrich did not seem to be displeased with any of the work which had gone on during the week. He did say, however, that Mr. Helfrich did not see the list of work which was assigned to the claimant. He stated that the gang did good honest work during that week except for the lack of picking up the nine foot poles or letting someone know about that for the mile parker posts, and the fuel shortage deal on the tampers.

Mr. R. A. Woods, Manager of Track Maintenance, testified that in his judgment Items No. 1, 2, 4 and 5 should have been completed and Item No. 6 started. He further stated that the claimant was responsible for having the necessary fuel.

The entire transcript and all of the testimony of the witnesses, including the exhibits submitted by both parties, have been carefully studied and considered by the Board. Also all of the contentions made by the Union have been considered.

It is true that the charge could and probably should have been more precise in setting forth the exact assignments which were given to the claimant and were not performed. The word "unattended" can be used as well as "completed." However, the evidence fully establishes that the claimant was well aware of what he was assigned to do and what the Carrier contended he had left unattended. On that basis the Board will not overrule the decision on the basis that the charge was not precise.

The Board recognizes and fully appreciates that the claimant was very sincere in believing that he performed the duties well and kept the crew busy. However, the evidence is sufficient for the Carrier to find the claimant did not perform some of the duties which were assigned to him to be performed during that week. The evidence is also sufficient for the Carrier to find the claimant could have had his gang perform those duties during the time involved.

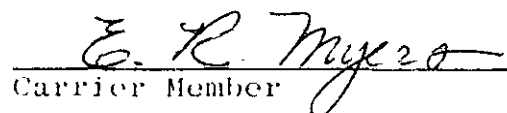
The Board further recognizes that some of the deviation was beyond the claimant's control. However, the evidence does establish that the claimant could have performed some of the higher priority duties and should have had the gang complete those duties during the time involved. After much deliberation it is the opinion of the Board that the evidence does not justify setting aside the decision of the Carrier.

AWARD: Claim denied.

January 29, 1988

  
Preston J. Moore, Chairman

  
Union Member

  
Carrier Member