

PUBLIC LAW BOARD NO. 5418

Case No. 40

Award No. 40

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

- and -

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of a 25 working day suspension and disqualification as a Foreman, which was imposed on Foreman Douglas Bush on April 18, 2000.

FINDINGS: The issue herein came about as a result of the claimant being charged with occupying a track without proper authority.

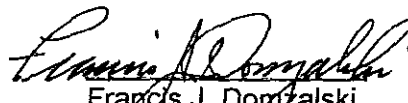
Based on the record, we find no need to elaborate on the specifics of this case in light of the claimant's admission of his wrongdoing at his hearing. However, in so doing, the claimant asserted that there were mitigating factors that should be considered. He stated that he was ill and disoriented at the time of the incident, but in any event, he took appropriate measures to correct his mistake.

The Carrier asserts that based on the claimant's actions and the gravity of the offense, the discipline that they assessed was warranted and justified. Conversely, the Organization contends there is no justification for the amount of discipline assessed. They point to the fact that the claimant immediately recognized his error and took appropriate measures to correct the situation. Further, they also point to the fact that claimant has 24 years of service and the majority of which was in the capacity of a Foreman, therefore, they feel permanent disqualification is excessive.

Suffice to say that given the established facts of this case and claimant's admission of wrongdoing, we concur with the Carrier that discipline was warranted. However without diminishing the seriousness of this matter, the Board does take into account the claimant's 24 years of relatively good service and determines that the discipline assessed in its present form is

excessive. Accordingly, we deem that the assessed suspension should stand, however, we feel that the claimant should be given another opportunity to serve as a safe and reliable Foreman. Thus, the disqualification shall be lifted after one year, subject to the Carrier's customary requalification process, but the claimant will not be awarded any back pay.

AWARD: As specified in the Findings.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 2-12-2001