

PUBLIC LAW BOARD NO. 1844

AWARD NO. 38

CASE NO. 43

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"(1) The forty-five (45) days deferred suspension of Assistant Foremen C. T. Wooldridge, G. P. Larson and Michael O. Rand was capricious, improper and based upon unproven charges. It should, therefore, be stricken from their respective records."

OPINION OF BOARD:

On April 25, 1977, Claimants each were employed as Assistant Foremen on a large gang laying ribbon rail on the Spooner subdivision of Carrier's Twin Cities Division. As Assistant Foremen they were assigned to assist Foreman Kodesh in the performance of his duties. See Rule 3(c).

On the day in question, the gang concluded its work near Sarona and proceeded on overtime to put the track machines and crane in a siding and tie up for the next day. The first track vehicle went into the siding at about 4:50 p.m. Before the machines had all been refueled and switched into the siding, Claimants asked and were granted permission from Foreman Kodesh to go home. Claimants left the job site at about 5:30 p.m. and the Foreman and Machine Operators remained to finish refueling and switching the machines into the siding. They completed the work at about 6:00 p.m. and they too left for the day. It is unrefuted that Carrier's safety rules required that with equipment in the siding the switch must be lined for the main track and locked.

That night at 10:30 p.m. a way freight operating between Bloomer and Saronia approached the switch at a speed of approximately 30 miles per hour. The Engineer noted, too late to avoid a disaster, that the switch was not lined for the main line but rather for the siding. He was unable to stop the train before it entered the siding, struck the track equipment and derailed. Members of the train crew were injured and Carrier's equipment suffered extensive damage.

Following proper notice and one postponement a hearing was held on May 14, 1977. After that hearing, Claimants each were assessed a 45-day deferred suspension based upon Carrier's finding that they were contributorily responsible for the collision. We must reverse that finding and set aside that discipline.

Claimants were given permission from their authorized superior, to go home at 5:30 p.m. That permission was in no way qualified or made contingent upon closing and spiking the switch. Evidently someone was negligent in leaving the switch lined for the siding after all the machinery had been switched in at approximately 6:00 p.m. By that time, however, Claimants had left the job site with permission. By excusing his Assistant Foremen and letting them go home, the Foreman assumed full responsibility for personally supervising and checking all the remaining work, including the proper alignment of the switch. We certainly do not condone negligence or failure to obey safety rules, but to hold Claimants guilty of such misconduct on this record would be arbitrary, unreasonable and capricious. Where Carrier's exaction of discipline is without foundation in fact it cannot be permitted to stand. See Third Division Awards 4325, 5543, 5787, 6056, 6116, 6827, 10582, and 21649. The claim must be sustained.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

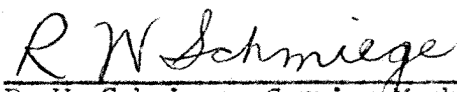
1. That the Carrier and Employe involved in this dispute are, respectively, Carrier and Employe within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was violated.

AWARD

Claim sustained.


Dana E. Eischen, Chairman


H. G. Harper, Employe Member


R. W. Schmiede, Carrier Member

Date: _____

12/6/78