

PUBLIC LAW BOARD NO. 2774

Award No. 146
Case No. 146

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to assess Extra Gang Foreman S. A. Luttjohann's personal record with thirty (30) demerits was in violation of the agreement and was without just and sufficient cause and on the basis of unproven charges, said action being totally unwarranted and in abuse of discretion.
2. That the claimant's personal record will be cleared of all charges and the demerits be expunged therefrom and claimant be allowed compensation for all wage loss suffered and expenses as the result of the unjust treatment."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that on the date of the incident herein claimant was assigned as a foreman on an extra gang at Emporia, Kansas. By letter dated June 6, 1984, claimant was cited for a formal investigation for conduct on June 4, 1984, in which it was alleged that he was not wearing his hard hat or safety glasses and, further, he had allowed men assigned to his extra gang to work without proper eye protection or hard hats on the same date. He was informed that there was a possible violation of nine different Carrier rules and one bulletin. Following the formal investigation which was held on June 27, 1984, claimant's record was assessed with thirty demerits.

Petitioner, in addition to alleging that Carrier had not established any violation of the rules, insists that the hearing was improper in that the

Hearing Officer was prejudiced and the results were prejudged. There are numerous examples of the improprieties on the part of the Hearing Officer alluded to by the Organization. Carrier on the other hand insists that claimant was properly found guilty of not wearing his hard hat or safety glasses and allowing men assigned to his gang to work without proper eye protection and hard hats on that same day. Thus, the demerits assessed were proper since he was obviously guilty of the charges, according to Carrier.

A study of the transcript of the investigation reveals that there were numerous significant errors made by the investigating officer. The Hearing Officer initially refused to provide information requested at the outset of the hearing, properly, by claimant. Claimant desired to know which employees of his gang allegedly did not have proper protection on the day in question. This information was refused at the opening of the hearing (much less in the charges). Additionally, as examples of the improprieties in the course of the hearing, the Hearing Officer precluded claimant from establishing through testimony the reasons for his conduct on the day in question and the manner in which he conducted himself in terms of the incident in question. Again, as an example of the Hearing Officer's improper conduct, he refused to accept statements from an employee involved in the incident and then, when refusing the statement, did not permit the Organization a brief recess in order to call those employees as witnesses. There were other additional improprieties in the course of the hearing. It is evident that hearings of the type involved in this matter, which could produce serious discipline, must be conducted in a fair and impartial manner. It is the function of the Hearing Officer not to act as merely a prosecutor, but to produce and secure through witnesses all pertinent information with respect to the matter under investigation. In this case, it is apparent that the Hearing Officer failed badly in this task. The defendant or claimant in this instance is entitled to make a defense using relevant information and evidence which he desires to procure. He should be given broad latitude in doing so. The Hearing Officer and the Carrier later contended (following the hearing) that the claimant and his representative were attempting to confuse matters and distort the hearing's purpose. An examination of the transcript does not support this allegation. On the contrary, the Hearing Officer curtailed claimant's plain and essential right to defend himself through his testimony.

The Hearing Officer has no right to object to the response to questions. While the Hearing Officer might consider a question to be improper, on a number of occasions in the course of this matter the Hearing Officer objected not to the question but to the answer which claimant had given. This is improper on its face and a violation of due process

Based on the comments of the Hearing Officer in the course of the hearing, the matter of guilt or innocence on the merits is immaterial. The hearing was so flawed in the Board's opinion that the result cannot stand. The claim must be sustained.

AWARD


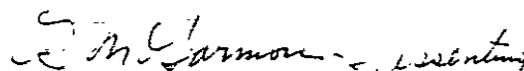
Claim sustained.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman


C. F. Foose, Employee Member
G. M. Garmon, Carrier Member

Chicago, Illinois
February 6, 1986