

Award No. 9
Case No. 20

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

Request that J. W. McKenny be restored to his foreman's position with seniority unimpaired and be allowed the difference in rates of pay from November 3, 1978 until so restored.

FINDINGS:

On August 15, 1978, Engineer of Track Archinal and Assistant Supervisor Cregger went to the Calvert Street Tunnel to observe the work of claimant's track gang. A slow order placed on the main track of that Tunnel on June 17, 1978 had not been removed by August 15, 1978 and Mr. Archinal considered it important to observe the activities of claimant's gang at their work site. His visit was certainly reasonable and consistent with his responsibilities.

It is his testimony that claimant's gang did not reach the job site until 9:10 a.m. and then were permitted to take their lunch from 10:35 a.m. until noon. Mr. Cregger corroborated that testimony in essential particulars. Their testimony is credible

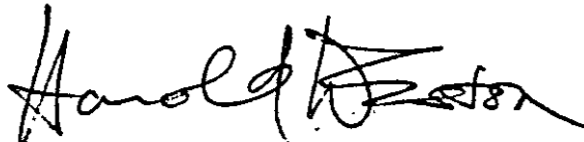
and specific; though controverted by claimant and members of his gang, it is sufficiently substantial to support Carrier's findings and in line with numerous awards this Board will not disturb them. It is not within our province to resolve questions of credibility. As an appellate board, we have no opportunity to observe the conduct and demeanor of the witnesses or to hear them.

There is no evidence that claimant was singled out for unfair treatment or that Carrier committed prejudicial error. In the light of these considerations, the findings and the entire record, we find no persuasive basis for substituting our judgment for that of Carrier in the demotion of a supervisory employee.

AWARD:

Claim denied.

Adopted at Baltimore, Maryland, February 2, 1982.



Harold M. Weston, Chairman


Carrier Member
Employee Member