

PUBLIC LAW BOARD NUMBER 3530

Award Number: 115

Case Number: 115

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, Edgar Mahon, Rt. 2, Box 184, Delbarton, WV 25670 was assessed a 10-day suspension for alleged responsibility of the Switch Gang going beyond their authorized working limits. Claim was filed in accordance with the Railway Labor Act and agreement provisions. Employees request the 10 day suspension be removed from his record with pay for all lost time with seniority and vacation rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on April 6, 1970.

By letter dated April 5, 1988, Claimant was directed to attend a formal investigation on charges that he was responsible for the operation of a Switch Raising Gang beyond its authorized working limits. The investigation was postponed and eventually conducted on May 10, 1988. By letter dated May 27, 1988, Claimant was assessed 10 days actual suspension based on evidence adduced at the investigation.

The issue to be decided in this dispute is whether Claimant was suspended for just cause under the Agreement; and if not, what should the remedy be.

On March 28, 1988, Claimant was assigned as Assistant Foreman in charge of Switch Raising Gang No. 2 at the Carrier's Williamson, West Virginia Yard. There is no dispute that Claimant's duties included obtaining track and time limits for the Gang. Claimant obtained authority to work "down to the signal at Armour's"; which he confirmed as "permission to go on to Armour's Crossing and start this work and come back east working."

About 20 minutes after that conversation with Dispatcher R. A. Saunders, Saunders notified Chief Dispatcher A. S. Padis that he had red signals west of the signal at Armour's Crossing -- a place no gang was authorized to work. On investigation, the gang turned out to be Claimant's. At the investigation, Claimant admitted that his gang was in this area.

The signal at Armour's has been in its current location since November 15, 1983. Claimant had been a track patrol foreman in the area of Armour's Crossing control point for a period of 5 months subsequent to November 15, 1983.

The position of the Carrier is that Claimant was suspended for just cause under the Agreement. The Carrier contends that Claimant's gang was working in an unprotected area. The Carrier further contends that despite the responsibility Saunders might have for confirming the location of Claimant's gang, Claimant was responsible for his gang's working beyond its authorized limit. The Carrier notes that Claimant was familiar with the area, knew or should have known of the relocation of the signal and that he was qualified to obtain track permits. The Carrier maintains that the discipline is commensurate with the offense and is, in fact, quite lenient

considering the danger in which Claimant's gang was placed by Claimant's actions.

The position of the Organization is that Claimant was suspended without just cause. The Organization contends that Saunders was responsible for any deviations between Claimant's what he believed were his instructions. The Organization maintains that Claimant properly called in his request for protection in the work area to which he was moving and that all he did was to do what he said he was going to do. Any subsequent mislocation of the gang was the responsibility of the dispatcher and therefore, not Claimant's. The Organization further contends that the discipline imposed was excessive.

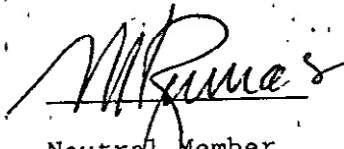
After review of the entire record, the Board finds that Claimant's suspension was for just cause under the Agreement.

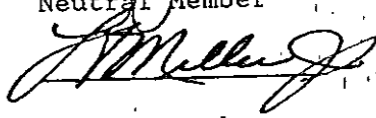
The Carrier has satisfied its burden of proof in this case. It has established that substantive credible evidence exists in the record to show that Claimant's gang was working beyond its authorized working limits. Further, Claimant knew, or should have known, where his gang had been authorized to work and how to arrange that with the dispatcher. The responsibility for failure to be in the proper place must be Claimant's, although the dispatcher may be responsible in some measure for the gang's location. It is well settled that the fact that one employee is responsible for a violation or offense does not relieve other employees of their responsibility. Therefore, based on the facts developed in the record, the Board finds there was adequate basis for the discipline imposed. The Carrier acted without arbitrariness, caprice or discrimination.

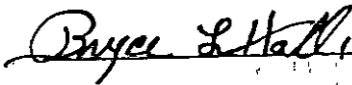
3530-115  
pg 4

AWARD

Claim denied.

  
Neutral Member

  
Carrier Member

  
Organization Member

Date: FEB. 22, 1990