

PUBLIC LAW BOARD NUMBER 3530

Award Number: 15

Case Number: 15

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Section Foreman, J.O. Naylor, Box 424, Sardinia, Ohio, 45171, was disqualified as a Section Foreman or Assistant Section Foreman and assessed 30 days actual suspension for allegedly failing to take proper precaution to protect train movements. Employees request pay for time lost, with vacation and seniority rights unimpaired.

FINDINGS:

On the evening of May 27, 1982, Claimant was called out to inspect track at Williamsburg, Ohio, during a severe rain storm. As a result of the events that occurred that evening, Claimant was disqualified as a Section Foreman and Assistant Section Foreman and assessed an actual suspension of 30 days. Carrier's action was based on the charge that Claimant had "failed to take proper precaution to protect train and engine movements from the unsafe track conditions created by this storm."

At the Organization's request, a hearing was held in order to investigate the charge. On the basis of the evidence adduced at the hearing, Carrier determined that Claimant had failed to properly perform his duties as charged, and that the discipline assessed against him was justified. The Organization filed a claim protesting Carrier's actions and requesting that Claimant be compensated for lost pay with all seniority and vacation rights unimpaired. The Claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether the discipline assessed against Claimant was supported by just cause; and if not, what should the remedy be.

At the hearing, Carrier introduced into evidence a transcript of communications with the Dispatcher on the evening of May 27, 1982. On Page 4 of that transcript, Claimant contacted the dispatcher and informed him that two ties were washed out of the track near Main Street in Williamsburg. Claimant further informed the dispatcher that men will be needed presumably for the purpose of performing repairs.

Claimant testified that after conversing with the Dispatcher, he was unable to re-establish contact and that he then proceeded to Sardinia in order

to contact the Dispatcher from the track telephone located there. Claimant admitted that he took no actions to protect train movements in the Williamsburg area after discovering the track damage there. Claimant also admitted that as Section Foreman, he was responsible for the safe passage of trains over his section, and that Williamsburg was part of his section.

A review of the record as a whole shows that after discovering damage to the track in Williamsburg, Claimant left the area without knowing whether any trains were due to pass through the area and without taking any precautions to provide for the safe passage of trains through the area. Carrier has a right to expect that a Section Foreman will take precautions to ensure the safety of trains and crews in the event that he discovers track damage. In the instant case, Claimant failed to do so. It therefore cannot be held that Claimant was improperly disqualified as Foreman and Assistant Foreman. In view of the potential danger to crews and trains, it likewise cannot be held that Claimant's 30-day suspension was harsh or excessive.

The Organization contends that Carrier failed to properly notify and arrange for the presence of necessary witnesses in that Station Agent DeCamp, who originally contacted Claimant, was not called to testify. However, there is no evidence that DeCamp could have presented testimony that would have served to exonerate Claimant in any manner; and it therefore cannot be held

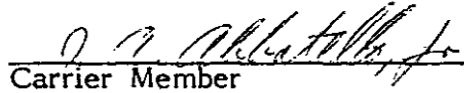
that Claimant was prejudiced by DeCamp's absence.

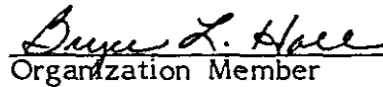
It is the opinion of this Board that Claimant received a fair and impartial hearing, that the record contains clear and convincing evidence of Claimant's culpability, and that the discipline assessed was not overly harsh or excessive under the circumstances. Accordingly, the claim is denied.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: 1-25-85