

Case No. 51

Burlington Northern Railroad

The Organization contends that Carrier did not afford Claimant a full and fair hearing as stated in Rule 40(c) of the Agreement. It asserts that Claimant was called for an investigation for failure to comply with instructions and his alleged responsibility for a derailment on July 12, 1985. However, it avers that he was charged with violation of Rules 500 and 502(B) for his carelessness

of the safety of himself and others by his failure to comply with instructions from proper authority. In the Organization's view, Claimant can not be called for an investigation regarding one purpose and disciplined for another purpose. It avers that Rule 40(c) of the Agreement states that the notice must specify the charges for which the investigation is being held. Thus, it maintains that due to Carrier's failure to adhere to the provisions of Rule 40(c), the claim must be sustained on procedural grounds alone.

As to the merits, the Organization denies that Claimant was given instructions from Roadmaster Douthit to cut out rail. It asserts that Claimant was instructed to help and assist Gang 905 in resurfacing operations and if it was necessary, to cut out a section of rail to relieve pressure on the track. The Organization asserts that after the resurfacing operation was completed, Claimant determined that it would not be necessary to cut any rail from the resurfaced track. It contends that Claimant's determination was supported by testimony of Gang Foreman Williamson and Section Foreman Shymanski. In the Organization's view, Claimant was not given clear instructions by Douthit on July 12, 1985 and followed normal accepted procedure whereby he was prepared to cut out rail if the conditions required it. The Organization asks that Claimant's record be cleared of all reference to this matter and that he be compensated for all wages he lost.

Carrier, on the other hand, insists that it did not violate the Agreement. It contends that it is not required to cite rules

in the notice of investigation initially sent to Claimant. It argues that Claimant was fully aware of the charges against him and proceeded with the investigation. As to the merits, it contends that Claimant was directly instructed by Douthit to cut the rail to prevent the track from buckling. It asserts that the testimony of Douthit is supported by that of Track Inspector Olson in that the instructions were clearly conveyed to Claimant, who understood them but did not comply. As a result, it avers, the rail did buckle and the derailment occurred. As such, Carrier argues that Claimant was insubordinate justifying the imposition of the penalty of a fifteen day suspension.

After reviewing the entire record evidence, this Board is convinced that the procedural argument is unfounded. A notice is sufficient if it advises a claimant of the charges in a manner sufficient to permit him or her to prepare an adequate defense. The claimant must be able to understand the subject and purpose of the investigation. We do not find any indication that Claimant, here, was prejudiced by the nature of the charge as framed. He comprehended its import and he was able to prepare an adequate defense.

As to the merits, the record provided sufficient, competent and credible evidence adduced to support Carrier's conclusions of Claimant's guilt. Roadmaster Douthit testified that he specifically instructed Claimant to cut the rail and that such instructions were understood by Claimant. Claimant disputes this version, stating that he was instructed to cut the rail only if he

determined it to be necessary.

It is fundamental that the Board, sitting as an appellate body, may not resolve conflicts in testimony. This must be left to the trier of fact. Here, the Hearing Officer chose to believe the testimony of Douthit and to reject Claimant's version. We have no basis for overruling that decision. Accordingly, we find that Claimant is guilty as charged.

The only question remaining is the appropriate penalty. Claimant was assessed a fifteen day suspension and unless it is shown that this discipline is arbitrary, capricious, or excessive, the Board will not overturn it. Accordingly, and for the foregoing reasons, the claim is denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/4/90