

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Burlington Northern and Santa Fe Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on December 22, 2003, when it withheld the Claimant, Mr. S. C. Brown, from service and subsequently dismissed him for allegedly violating Maintenance of Way Operating Rule 1.13, Reporting and Complying with Instructions, and Engineering Instructions 5.4.2, Gage Correction, when he failed to properly repair a wide gage problem at switch 44A in Galesburg Yard that led to a major derailment in the yard on December 21, 2003.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate the Claimant to service with benefits and seniority unimpaired and make him whole for all wages lost account of this violation. Additionally, the Carrier shall remove any mention of this incident from the Claimant's personal record. [Carrier File No. 14-04-0018. Organization File No. 10-13N1-0324.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Shannon C. Brown, worked his first day as Section Foreman in Galesburg Yard, Illinois, on November 24, 2003. He had been hired by the Carrier on August 6, 1996, and his personal record shows that he had worked as Trackman, Motor Vehicle Operator, and Section Foreman. He stated he had been a Foreman since July of 2000, but had just displaced on the Foreman's position at Galesburg.

A derailment occurred at a switch within the yard at Galesburg on December 21, 2003. On the following day, the Claimant was served a notice of investigation and charges, reading, in part, as follows:

[F]or the purpose of ascertaining the facts and determining your responsibility, if any, for your alleged failure to correctly repair Wide Gage, location 44A switch, Galesburg Yard, as identified by Track Inspector Dale Hopping on November 24, 2003, which resulted in derailment on December 21, 2003, while assigned as Foreman on Galesburg Section.

The letter goes on to advise that the Claimant was being withheld from service pending results of the investigation.

The investigation was set for and held on December 30, 2003. The Claimant was ably represented by the Organization's Assistant General Chairman. A transcript of evidence and testimony presented therein appears in the record before this Board.

The Claimant's representative entered an objection to the failure of the notice of charges to state what rules were allegedly violated, thus impairing its defense. At the close of the investigation, after two rules were made a part of the record, the objection was renewed. His objections were made a matter of record.

Roadmaster John M. Bainter, Track Inspector Dale R. Hopping, and Truck Driver George P. Mitchell were called as witnesses by the Parties, and all of them offered testimony and evidence. The Claimant was also questioned and submitted written statements in the record. Their composite testimony and evidence disclosed the following series of events, beginning on November 24, 2003.

Mr. Hopping, making a routine inspection of the track structure, found a wide gage condition at Switch 44A, and one of three gage rods installed at that location was broken. The gage measured $57\frac{1}{4}$ inches, or $\frac{3}{4}$ inch wide. This deviation does not require that this particular switch be taken out of service, but does require repair to restore the prescribed gage of $56\frac{1}{2}$ inches and replacement of the broken gage rod.

Since this was the Claimant's first day on this Foreman's position, Assistant Roadmaster Ken Pickens instructed him to contact Mr. Hopping to determine what work needed to be done. Mr. Hopping gave him a written list of four work sites, including Switch 44A, with the notation, "1 gauge rod." (The terms "gage" and "gauge" are used interchangeably; they have the same definition in this industry, i.e., the inside distance between the balls of the rails of the track.) Being unfamiliar with Galesburg Yard, the Claimant was told where these four locations were by Mr. Hopping. Mr. Hopping testified that gage rods had been used at Switch 44A since before April, 2003, and he believed that replacement of the broken rod would hold the track in gage until the crossties could be replaced. He described the tie conditions at that location as "marginal at best."

When the Claimant and his workmen got to Switch 44A, he found the switch as described by Mr. Hopping. The crew replaced the gage rod and used it to restore the track gage to the prescribed width. The Claimant also noted that the condition of the crossties at the switch was "marginal," but he did not notice any plate cutting, which would permit the rail to roll over when under load. The spikes were down and were holding. He said he felt the three gage rods used there would maintain the proper gage, pending replacement of the ties. He contended that he did not have the equipment which is necessary for tie replacement, nor personnel qualified to operate such equipment, and he said he thought Roadmaster Bainter and Assistant Roadmaster Pickens were aware of the tie conditions at that spot. (Mr. Bainter denied knowledge of the tie condition at Switch 44A. Mr. Pickens was not present at the investigation.)

Mr. Hopping stated that after the work was done, the Claimant advised him that the gage rod had been replaced, but he did not inspect the switch again between November 24 and the derailment on December 21.

Mr. Mitchell had previously been the Foreman at Galesburg Yard. He had been displaced by the Claimant, but continued working on the same gang as a Truck Driver/Trackman. He characterized the tie conditions at Switch 44A as "bad," and their condition was the reason for using three gage rods at that location. He also testified that there were several spots in Galesburg Yard where gage rods were being used to hold the track in gage, because of the condition of the crossties. He testified that when the work was completed on Switch 44A, it was in gage and, "Everything looked good when we left." Asked the question, he did state that there was nothing that would have prevented them from installing ties at that location on that day. He further added that he did not believe the work they did that day caused the derailment 27 days later.

A derailment occurred at Switch 44A on December 21, 2003. Roadmaster Bainter's area of responsibility includes Galesburg Yard, although he was not present during the week which included November 24. He said the cause of the derailment on December 21 was a wide gage exceeding 58 inches. Two of three gage rods were broken. The ties were plate cut, which allowed the rail to cant, and were in such condition that the ties could not hold the gage. He said that gage rods are only a temporary remedy, and cannot be expected to be effective for more than 30 days. He testified that prior to the derailment, he was not aware of the condition of the ties under Switch 44A. He said that if he had known of the condition of these ties, he would not have allowed gage rods to be used as a substitute for new ties. He asserts the derailment was caused by the repairs made by the Claimant on November 24.

On January 13, 2004, the Claimant was notified of the result of the investigation:

This letter will confirm that as a result of formal investigation on December 30, 2003, concerning your failure to correctly repair Wide Gage, location 44A switch, Galesburg Yard, as identified by Track Inspector, Dale Hopping on November 24,

2003, which resulted in derailment on December 21, 2003, while assigned as Foreman on Galesburg Section, you are dismissed from employment of the Burlington Northern Santa Fe Railroad, for violation of Maintenance of Way Operating Rule 1.13, Reporting and Complying with Instructions and Engineering Instruction 5.4.2, Gage Correction.

The subject Rules read as follows:

Maintenance of Way Operating Rule 1.13

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

Engineering Instruction 5.4.2

Correct the track gage as follows:

1. Place speed restrictions, as necessary, according to Table 4-2 in Engineering Instruction 4 Temporary Speed Restrictions, specifically section 4.10.

When the wide gage locations are 58 inches or more, immediately remove the affected track from service until the wide gage is corrected. When unloaded track is measured, the amount of rail movement, if any, that occurs while the track is loaded must be added to the measurement of the unloaded track.

2. When correcting wide gage, consider gage on each side of the wide gage.
3. When correcting gage on a curve, make sure the curve is aligned correctly.

Note: The high rail is the line rail and the low rail is the gage rail.

4. When base gaging curve-worn rail, use the appropriate base gage, except in an emergency. The base gage for the various rail sections is as follows:

[Dimensions omitted]

5. Consider rail rotation. If the rail is rotating, a differential plate cutting will often occur. The tie plate will cut deeper on the field side than on the gage side. Adze or renew ties as necessary to provide a flat seat for the tie plate.

6. Consider the tie condition. Renew ties as necessary when the wide gage being corrected is due to poor tie condition. Whenever possible, do not use steel rods to reinforce a poor tie condition.

The Carrier's disciplinary decision was promptly appealed by the Organization to the Carrier's Labor Relations Department. The Organization argues that although the Carrier contends that the Claimant did not comply with instructions, he did exactly as instructed. The Track Inspector found a broken gage rod in Switch 44A. The Claimant was instructed to replace it, and he did so. Although the Carrier's witness contended that a gage rod is only a temporary remedy, the Organization asks why the switch had not been properly repaired before the Claimant came on the job. The Organization further asks, if this switch was a "problem area," why had not the Track Inspector checked it more frequently, and ordered further repair.

The Organization also challenges the notice of investigation as naming no rules allegedly violated, but then bringing them into the record at the close of the investigation, when all the testimony has been heard. The Organization raises a due process issue on this point.

The Organization also argues that the Claimant left the switch in good condition, but 27 days later, after approximately 1,500 cars per days were moved through this switch (a total of some 40,500 cars), and a six-axle locomotive with inflexible trucks had traversed this sharp turnout, it constitutes harassment to charge the Claimant with faulty repairs.

The Carrier rejoins that the Claimant was afforded all his due process rights, and substantial evidence was adduced, including the Claimant's own testimony, that he failed to make a permanent repair on Switch 44A, as he was instructed. The Carrier further argues that gage rods are used as a temporary repair to hold the track in gage until the underlying defect causing the gage problem can be repaired, and it was the Claimant's job to keep the switches and tracks in sufficient repair. Here, he did not address the underlying problem.

The Carrier also argues that it is not the Track Inspector's job to tell the Foreman how to do his job. The Claimant should have known what was needed to make a permanent repair, and if he did not have the men or materials or time available, he should have made the condition known and sought the resources to fix the problem. He had a further obligation to check the condition of the temporary repair to ensure it was holding gage, but he did nothing to follow up and a derailment occurred. The Carrier denies the Organization's claim.

The Organization further responded to the Carrier's denial. It argues that the Claimant realized that merely replacing the gage rod would not fix the problem. He therefore pulled the spikes, plugged the spike holes, and re-gaged the turnout, in addition to replacing the gage rod as instructed. It suggests that he not only complied with instructions, he exceeded them. It was the best he could have done at the time, as attested by Mr. Mitchell, who had previously been the

Foreman at that location. It further argues that Track Inspector Hopping, whose responsibility it is to perform the needed inspections and report the track conditions to the Roadmaster, did not feel that anything other than replacement of the gage rods was necessary. If he had, he might have taken the track out of service, or he might have ordered other repairs than replacement of the gage rod. The Organization adds that while it could be said that the Claimant should have replaced the ties, the repairs he made were proper, given the resources at his disposal.

The Board has studied with care, more than once, the lengthy transcript in this case. The Parties' respective arguments have been given equal attention. There are several difficult issues which require extensive discussion.

First, the Organization has raised objection to the Carrier's failure or refusal to name any alleged rule violations in its notice of charges. It also challenges the practice of bringing the rules into play at the end of the investigation, naming them only after evidence has been offered. It argues that its ability to defend the charged employee is diminished by this procedure. The Collective Bargaining Agreement, Rule 13(c), provides for the notice:

Notice of Investigation. Prior to the investigation, the employee alleged to be at fault shall be apprised, in writing, of the circumstance or matter to be investigated, sufficiently in advance of the time set for investigation to allow reasonable opportunity to secure the presence of necessary witnesses and representative(s).

The notice in this case appears to meet the requirements of the Rule:

[F]or the purpose of ascertaining the facts and determining your responsibility, if any, for your alleged failure to correctly repair Wide Gage, location 44A switch, Galesburg Yard, as identified by Track Inspector Dale Hopping on November 24, 2003, which resulted in derailment on December 21, 2003, while assigned as Foreman on Galesburg Section.

Although no rules are cited, this notice is sufficient to apprise the Claimant and his representative of what they must defend. As for the Maintenance of Way Operating Rules (MWOR) read into the transcript, this Board addressed that issue in Award No. 268.

Employees are deemed to have knowledge of the Rules which govern their employment. If unrelated Rules are raised for the first time during the course of the investigation, there might be merit to the objection, but not in this case.

In its Statement of Claim, the Organization asserts that the Carrier "violated the Agreement on December 22, 2003, when it withheld the Claimant . . . from service . . ." The Conduct-

ing Officer directed a question to Roadmaster Bainter about this issue, which produced an interesting response:

438. Q. Mr. Brown and Mr. Davis [the Claimant's Representative] have identified that Mr. Brown was the only person that was withheld from serve pending results of this investigation. Can you explain for the record why that was?
- A. It was a tough decision to make pulling Mr. Brown from service. But upon viewing Mr. Brown's hard card, which I do have a copy of, we noticed that Mr. Brown has a systematic pattern of leadership negligence. I thought it would benefit the Company more to withhold him from service pending the result of the investigation.
439. Q. So he's got quite a, quite past then?
- A. Yes, he does. [Above underscoring supplied.]

Statement by Mr. Davis

Objection. We're here to decide what happened between November 24 and December 21. And we are beyond the scope of the investigation notice here. Mr. Brown's previous record has nothing to do with the facts of this investigation.

Statement by Mr. Heille [Conducting Officer]

Okay, Mr. Davis, I agree. We'll stick to the facts here. I was just trying to, trying to answer the question. You know, you raised the question, I'm trying to answer it. That's all I'm going to say about that. I have no more questions of you, Mr. Bainter.

But the issue was not laid to rest. After a few questions regarding other matters, Mr. Davis questioned Mr. Bainter further:

473. Q. Well, Mr. Bainter, in, in your testimony, which, which I objected to, you eluded [*sic*] to the fact that Mr. Brown was taken out of service because they were looking at his hard copy, his past record. Is, is this what you testified to a while ago?
- A. That is correct.
474. Q. Well a question comes to my mind. If someone else had worked on this switch and not Mr. Brown, would you have taken that person out of service?

- A. Absolutely.
475. Q. And it's customary to take somebody out of service whenever you have a derailment?
- A. Well, not customarily over a derailment. But this case, like I said, his hard card brought to, brought to light more circumstances and...
476. Q. So the, the reason that, that he was taken out of service was not really because he, he did not properly repair the switch it was because of his past work record?
- A. No, like I say, it was a hard decision to make. It was a combination of both of his failure to apply the proper remedial action, as well as the information we retrieved from his hard card. [Underscore supplied.]

Then, the Claimant questioned Mr. Bainter:

477. Q. In, you say because of my hard card, I guess that that was a, it was a hard decision to make, but that was primarily the reason I was pulled out of service. So you're saying that somebody with a clean record it would have been an easier decision or, or, or what?
- A. More, more consideration was taken in pulling you out of service because of issues on your hard card.
478. Q. Okay. In my hard card, have you reviewed that? You, you know what's on there or?
- A. Yes.
479. Q. Okay. Is it, to your I guess recollection here, anything on there of I, I, I should say punishment for work that I have performed incorrectly?
- A. None for work performed incorrectly.
480. Q. Okay, so there's nothing, no punishment ever been I guess assessed due to failure to complete a work properly?
- A. None. [Underscore supplied.]

From the record, the Board concludes that the Claimant was the only employee who was held out of service pending investigation. The Collective Bargaining agreement does permit employees to be held out of service pending an investigation. The applicable provision is found in Rule 13(b):

It is understood that nothing in this Rule will prevent the supervisory officer from holding men out of service where flagrant violations of Carrier rules or instructions are apparent, pending result of investigation which will be held within thirty (30) calendar days of date of suspension. [Underscoring supplied]

The Board is not persuaded that sufficient cause existed for withholding the Claimant from service, based upon a derailment which occurred twenty-seven days after he performed work on the switch. First, it is not apparent that a rule or instruction was violated, much less a "flagrant" violation. "Flagrant" is defined thus: "glaringly bad; notorious; outrageous. Flagrant applies to anything that is so obviously bad or wrong as to be notorious [a *flagrant* violation of the law]."¹ Second, despite his efforts to recover, it is clear that the Claimant's past record had substantial bearing on Mr. Bainter's decision to withhold him from service. Examination of his disciplinary history discloses that in his past offenses, none indicate a failure to do his work responsibly. This issue was addressed in the National Railroad Adjustment Board's Third Division Award 20272 and is strikingly similar. That Award states:

[T]he Trainmaster stated that the Claimant was taken out of service "because of his past discipline record." This reason is obviously not covered by the plain wording of the rule and, consequently, we shall award compensation to Claimant for the period of his pre-hearing suspension from service.

The Organization founded its argument for remission of the discipline on several bases. The Board will dispose of two of those arguments by noting that they are derived from some confusing passages in the transcript, and provide no support for the Organization's position. In the first of these arguments, the Organization suggests that the derailment at Switch 44A may have resulted when a "stiff, six axle train engine moved through the sharp turnout," and "the Carrier is well aware of that they have problems with these types of units in sharp turnouts." In another letter, the Organization asserts, "It is not uncommon for an engine with six axles to derail on a yard track switch, based on the fact that the turnout of the switch is too sharp to accommodate them. Engines with six axles have been known to derail on switches with good ties."

The foundation of this misconception begins when the Claimant explained entries in his diary which was entered by his Representative as an exhibit. He had made reference to a derailment on December 11, 2003, in another part of Galesburg Yard. On cross examination, the Conducting Officer said, "You stated that there was a six axle locomotive in your testimony." (Question No. 278.) The Claimant said he didn't know how many axles the locomotive had. The Conducting Officer asserted twice more in the following questions that the derailment on December 11 involved six axle locomotives, and the Claimant again insisted he did not know what

¹Webster's NewWorld Dictionary of the English Language, Second Edition (1984).

type locomotives they were. Careful examination of the preceding testimony does not reveal anything suggesting that the December 11 derailment involved six axle locomotives until the Conducting Officer himself injected that piece of information, perhaps an impression he had gained from prior knowledge.

The Organization, however, apparently misled by the deluge of testimony offered by the Conducting Officer and the Claimant's Representative, argued that the six axle locomotives may have been the cause of the subject derailment on December 21. The record, in fact, does not reveal what type of equipment was derailed at Switch 44A on December 21.

There is a further misunderstanding about the repairs made to Switch 44A. The Organization stated in its appeal, "Claimant Brown realized that merely replacing the gage rod would not fix the problem. Therefore, he pulled the spikes, plugged the holes, and regauged the turnout, in addition to replacing the gage rod as instructed." A written statement from Trackman Frank Hendrickson, submitted in evidence, alluded to repairs made at both Switch 43A and Switch 44A, and described having pulled the spikes, plugging the spike holes, and installing the gage rod.

Mr. Mitchell, however, testified that the re-spiking work was done at Switch 43A, and only the gage rod was replaced at Switch 44A, along with restoring the standard gage. His testimony was confirmed by the Claimant, who said the ties were in worse condition at Switch 43A, requiring the re-spiking. Since Mr. Hendrickson's statement made reference to both switches in the same paragraph, in somewhat ambiguous terms, it is understandable that a reader might be induced to believe that the same work was done to both switches.

The Board is not persuaded that the Claimant is solely responsible for the derailment at Switch 44A, twenty-seven days after he made the prescribed repair. There is little doubt that the Claimant's actions on November 24, 2003, his first day on the job in an unfamiliar work site, were largely based on what he was told by Track Inspector Hopping. In all likelihood, he placed too much reliance on the Track Inspector's assessment of what was needed to effectively repair Switch 44A. Mr. Topping's testimony is instructive:

94. Q. What were the tie conditions on April 24, excuse me, November 24, 2003 on the 44A switch at Galesburg Yard?
A. Tie conditions were marginal at best, I suppose. We'd been trying to put ties in there most of the summer, not necessarily just in that location, but all through that area.
95. Q. Why were you unable to do that?
A. Lack of track time for one thing.

96. Q. Did you instruct your supervisor or tell your supervisor about the condition of this, of the ties at this location?
A. Not at that time, no.
97. Q. Have you ever informed your supervisor about the condition of ties at that location?
A. Yes, sir.²
98. Q. When was that?
A. We've talked about it through most of the summer I would imagine, probably for a month or two anyway.
99. Q. But from December, from November 24 to, to December 21, you did not tell Mr. Bainter that there was defective ties at that location?
A. No, sir.
100. Q. But you said they were marginal?
A. Marginal. That place had probably been gauged and re-spiked, I don't know, one or twice, I suppose.
101. Q. Did you try to call the hump yardmaster or whoever's in charge at that location and try to get permission to install ties on November 24, 2003?
A. No, sir.
102. Q. Did you tell Mr. Brown to try to get an opportunity to change ties at that location?
A. No, sir, I did not.
103. Q. Can you tell me why you didn't ask for an opportunity to change ties at that location, Mr. Hopping?
A. Well, probably, well that gage rod had been on there for several months and with the gage rod being broken, I thought the gage rod would hold it for, until we had a chance to get ties put in. Like I say, three quarters of an inch wide is not an FRA defect. It was, so to me, that was a maintenance item more than.

²Roadmaster Bainter, however, testified that he was not aware of the condition of the ties, nor that gage rods had been applied at Switch 44A. (Question and Answer Nos. 429-430.)

104. Q. Okay. When you inspected the gage, when you measured the gage, was that in a static condition?
A. Yes.
105. Q. It was not under load?
A. Correct.
106. Q. Was there any evidence of any, of any movement in the tie area?
A. No, not that, you know, not anything new.
107. Q. Had we changed any gage rods at this location prior to November 24, 2003?
A. Not to my knowledge.
108. Q. Were you the employee who found the original three quarter inch wide gage and, and was instrumental in getting those gage rods placed to begin with?
A. No. They were there before I ever took the job over. I took the job over in April of this year, 2003. [Underscoring supplied.]

Clearly, the marginal (or bad) condition of the ties at Switch 44A was a long-standing, known problem. The Claimant, as we have noted before, was working his first day as Foreman at this unfamiliar location. The Board is compelled to ask whether he acted reasonably, under the circumstances. He was instructed to ask Mr. Hopping what work needed immediate attention. He had no foreknowledge of recurring problem areas. He was directed to change out a broken gage rod. Gage rods had been used to hold the track in gage at Switch 44A since before April, according to Mr. Hopping, who saw no evidence of tie movement, and who said, "I thought the gage rod would hold it for, until we had a chance to get ties put in."

Track Inspectors are required to have superior skills, because their qualifications are designated by the Federal Railroad Administration, in 49 CFR § 213.7. Among those qualifications, they must have demonstrated that they can detect deviations from the Federal Track Safety Standards and can prescribe appropriate remedial action to correct or safely compensate for those deviations. The Board believes that the Claimant had a right to depend on the recommendation made by Track Inspector Topping.

The Board also notices that 27 days passed between the replacement of the gage rod and the derailment. Mr. Bainter testified that approximately 1,500 cars per day pass over Switch 44A. Since this switch was located within the yard, movements would be made at slow speeds. Deviations which would not be acceptable on a main track where movements are made at speed,

are not infrequently permitted in yards where a derailment would not have catastrophic consequences. Clearly, the switch continued to deteriorate with the passage of so much traffic.

The Board believes, however, that the Claimant's knowledge of the poor tie conditions at Switch 44A should have triggered a cautionary course of action. He should have apprised his immediate superiors of the conditions at that location. (The Board is incredulous that Roadmaster Bainter was unaware of the tie conditions and the gage rods at Switch 44A, since the Track Inspector said the condition had been that way since before April, 2003, eight months or more before the derailment.) He could have sought permission to replace the defective ties, if he did not possess the authority to initiate replacement. The Claimant might have returned to see how his work was holding up. All the witnesses testified that gage rods are temporary expedients utilized when permanent repairs are not immediately performed. They were characterized as "Band-Aids" in the transcript. The Claimant was aware that Switch 44A required work of a more substantial nature. He is indirectly responsible for the derailment to that limited degree.

Accordingly, the Board determines that the Claimant's dismissal should be reduced to a lengthy suspension. The suspension might have been of shorter duration, but for his poor record. The Board notices these entries during the seven-plus years of his employment:

6-23-97	10-day deferred suspension	Sleeping while assigned as flagman.
9-21-98	5-day deferred suspension	Used Company vehicle for personal use against instructions.
10-9-98	5-day deferred suspension	Absent without authority.
11-3-99	Censure	Late to work and failure to comply with instructions.
10-6-00	10-day record suspension	Backed track machine over water hydrant.
7-3-01	20-day record suspension	Late to work on two days.
7-5-01	30-day record suspension	Failure to wear personal protective equipment.
9-21-01	Dismissed. (Reinstated 11-27-01)	Asleep during safety meeting.
8-16-02	Dismissed (Reinstated 11-25-02)	Leaving job without permission.

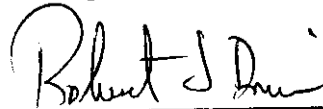
9-5-03 Record suspension Failure to comply with instructions, insubordinate,
quarrelsome.

This record precludes the Board from giving more relief to the Claimant with respect to the instant charge. The dismissal shall be reduced to a 90-day actual suspension, beginning January 13, 2004, and ending April 11, 2004. He shall be reinstated to service within thirty (30) days following the date of this Award, and be paid for all time lost after April 11, 2004.

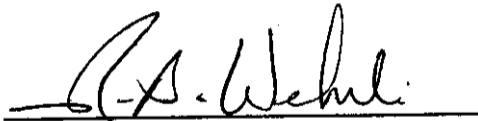
Because the Board is persuaded that the Claimant was withheld from service pending the investigation without sufficient cause, it directs that he be paid for lost time between the dates of December 22, 2003, when he was removed from service, and January 13, 2004, when he was notified of his dismissal. Payment shall be made within sixty (60) days following the date of this Award.

AWARD

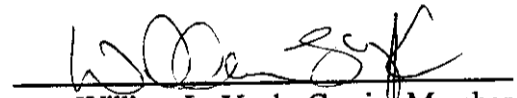
The claim is sustained in accordance with the Opinion. The Carrier shall comply with this Award within the respective time limits prescribed in the Opinion.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



William L. Yeck, Carrier Member

July 9 2004
Date