

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SEP 15 1988
VICE PRESIDENT-
LABOR RELATIONS

STATEMENT OF CLAIM:

1. The discipline (dismissal) assessed Extra Gang Foreman S. A. Sowa for alleged violation of various company rules as indicated in Mr. J. L. Parker's letter of April 25, 1988 was arbitrary, capricious and unwarranted.

2. The claimant's record shall be cleared of the discipline referred to in Part (1) hereof and he shall be compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Los Angeles, California on April 12, 1988 to develop the facts and determine his responsibility, if any, in connection with an allegation that while he was employed as foreman on Extra Gang 7870 he failed to call in time for his gang from February 28, 1988 up to and including March 9, 1988 in violation of General Rules A, B, D and 1511 of Maintenance of Way Rules and General Rules A, B, D, 600 and 607(3) as found in Safety, Radio and General Rules for All Employees, Revised April, 1985.

Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

The Board has studied the transcript and the evidence submitted. The claimant was well aware of the specificity of the charge, i.e., that he did not turn in his time report daily.

Steve Johnson, Manager Track Maintenance, Los Angeles, California testified that he received information on March 10 that the claimant's time had not been reported since the beginning of the period. He stated that he called GMS in Salt Lake and determined that the last time reported was for February 29, 1988, and that check was made on March 8.

Mr. Johnson further stated that the following day, March 9, there was still no time reported, and then the time was reported on March 10, 1988 at 9:50 a.m. which was time for March 1 and 2. He also stated that almost an hour later the claimant reported for Gang 7870

and the time was for March 3, 4, 5, 7 and 8. He further testified that the claimant had been instructed to report the time for the gang for each previous day, and it was never to be two days behind the schedule.

The claimant admitted he understood he was report his time daily.

The Union asked Mr. Johnson if a Duane Keane and Ray Nitche didn't report the same days, hadn't reported time since March 1 and if Mr. Nitche reported several more days on the 10th. The Hearing Officer stated he did not believe those people were in question at the investigation but finally did direct the witness to answer the question. Mr. Johnson stated that he had not received any information on any other employee for not reporting time, except one he could think of was Griff Turner, and he was not sure what the date or the allegations were regarding this employee.

The question is definitely relevant. The Employer cannot assess discipline to one employee for committing the same act which other employees have committed and who have not received any discipline. If the hearing officer had not allowed the witness to answer this question, the claim would have been sustained on the basis of the Carrier's refusal to admit such evidence.

The Union then requested that Mr. Keane and Mr. Nitche be made available for witnesses and to testify when they reported time for the first pay period in March. The Hearing Officer pointed out that he had asked the claimant whether he had any witnesses present, and the claimant replied that he did not.

The claimant denied that he was not familiar with Company policy regarding the matter of turning in time every day.

The Carrier introduced a letter which was mailed to the claimant by certified mail stating: ". . . Time must be called in on a daily basis. . . Upon attempting to approve time rolls for your gang, it was discovered that your time was not turned in from October 20, 1987 up to and including October 28, 1987. This action shows a decided irresponsibility, as well as non-compliance with instructions."

The Carrier pointed out this letter was not a matter of discipline. It was only introduced to prove that the claimant was aware he had been directed to turn in time daily.

The Carrier refused to call the two witnesses the Union requested. They were not necessary witnesses to the investigation but were witnesses which the claimant wished to have testify. It is incumbent on the claimant to notify the Carrier prior to the investigation that he has two witnesses he wants to be present during the

investigation. In other words, the claimant cannot wait until the investigation is underway and then request witnesses unless a matter is raised which could not be anticipated by the Union or by the claimant prior to the investigation.

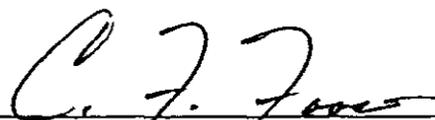
If the claimant or the Union intended to raise the matter of disparity of discipline for the same act, they should have notified the Carrier in advance that they wished to have those two witnesses present or attempt to have a stipulation from the Carrier that such was the fact.

Under the evidence presented the Carrier was justified in reaching a decision that the claimant was guilty as charged. There is no justification for setting the discipline aside.

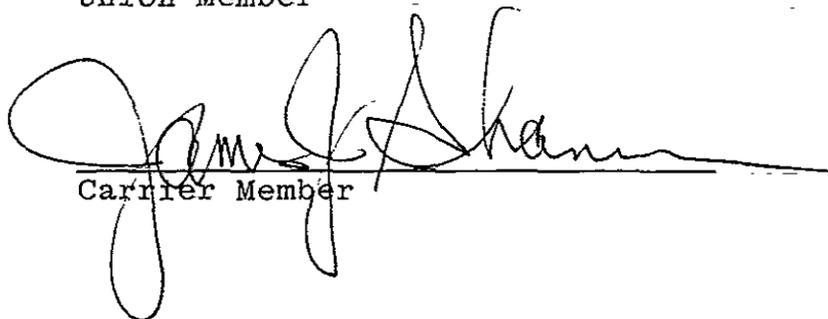
AWARD: Claim denied.



Preston J. Moore, Chairman



Union Member



Carrier Member