

PUBLIC LAW BOARD NO. 5418

Case No. 38

Award No. 38

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees

- and -

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of a reprimand and a 3 day suspension
Imposed on Equipment Operator, Thomas Stevens, on
October 28, 1999.

FINDINGS: Initially, the Organization contends that the claimant was not properly charged, and thus could not present a proper defense. Specifically, the Carrier did not cite the rules in the charge for which he was subsequently found guilty of violating. We disagree. The record shows there is a clear nexus between the contents of the charge and the discipline letter which cites the involved rules. Therefore, we find that due process was afforded the claimant.

This dispute arose as a result of the claimant being found guilty of violating Rules GR-A, GR-C and GR-J, stemming from his failure to perform his duties on August 9, 1999.

The Carrier asserts that, albeit, the claimant's Foreman did not report for work that day, the claimant did no work at all between the hours of 8AM and 11AM, and did not perform any of his assigned duties that day. They acknowledge, that the only service he performed after 11AM was to act as a Watchman after he was asked to do so by the contractor at the work site.

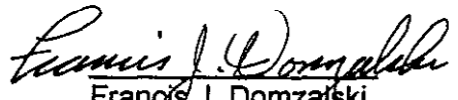
The Organization contends the claimant is not guilty. They assert, for numerous reasons, that claimant could not communicate with anyone, and, in any event, it was management's responsibility to insure that the crew was properly staffed and had proper leadership.

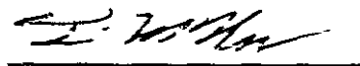
The record shows, that during the course of claimant's hearing, he testified that he did not perform any work function between 8AM and 11AM, and because he was waiting for supervision

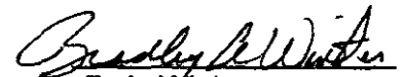
to come and give them orders. It was only after the contractor suggested to him to act as a watchman, did he perform any constructive work that day.

Based on the entire record, it is clear that claimant failed to exercise good judgment under the circumstances involved. Therefore, we agree with the Carrier that discipline was warranted. However, the Board concludes, that in light of claimant's 8 years of discipline free service, we deem that the discipline assessed for this first offense to be excessive and it shall be reduced to a Reprimand. Thus, claimant is to be paid for any time lost due to the suspension.

AWARD: As specified in the Findings.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 1-31-2000