AWARD NO. 4

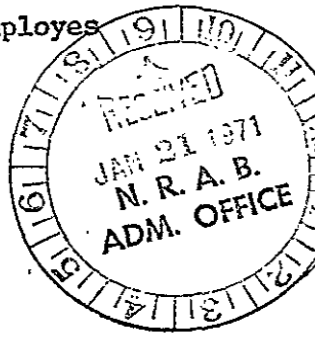
DOCKET NO. 262

PUBLIC LAW BOARD NO. 566

Pennsylvania Federation Brotherhood of Maintenance of Way Employes

vs.

PENN CENTRAL TRANSPORTATION COMPANY



STATEMENT OF CLAIM:

"HARRISBURG DIVISION - Case No. 275

Appeal of H. J. LaRosa from discipline, thirty days suspension (Time held out of service to apply) and disqualification as a Gang Foreman and Class 'A' employe - Failure to properly perform your duties as a Gang Foreman by directing an employe, in your charge, to contact an energized wire resulting to personal injury to Joseph LaRosa at approximately 3:06 p.m. on September 26, 1964 in the vicinity of 'Day'."

OPINION OF BOARD:

In September 1964 Claimant, then a Gang Foreman, inadvertently directed his son, who was an employee under his supervision, to make contact with an energized wire which resulted in injury to his son. Consequently, Claimant was charged with failure to properly perform his duties as Gang Foreman. After investigation and hearing, Claimant was suspended for 30 days and disqualified as a Gang Foreman.

At the time of the suspension, October 24, 1964, Claimant had been employed by Carrier for 36 years, the last seven of which as a Gang Foreman. Both parties are in agreement that Claimant had no prior record of discipline and record of any violation of the safety rules.

Claimant appealed the discipline imposed, and following a hearing the appeal was denied in a letter from the Superintendent, Personnel on December 8, 1964. In that letter it was stated:

"(i)f at some future time your supervision is of the opinion that you can assume the burden of a more responsible position consideration will be given to your restoration as a Gang Foreman * * *."

On March 15, 1965, Claimant made a request for reinstatement as a Gang Foreman. He was advised that his present capabilities could not be measured because so little time had elapsed.

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On February 2, 1966, Claimant bid for an advertised Gang Foreman position, and later in the same month successfully completed a written examination to qualify. Again, Claimant was rejected as being unqualified.

The matter before this Board is limited to the question of whether Carrier was arbitrary in its refusal to qualify Claimant as a Gang Foreman. The question of the 30-day suspension is not in issue.

It is a well-settled principle of this Board that Carrier has the managerial prerogative to determine the qualifications of an employee, and Carrier's judgment shall not be disturbed unless it is shown that it acted in an arbitrary and capricious manner. Moreover, as Carrier asserts, it has the clear right to remove any Supervisor who might endanger the safety of those working under him.

However, each dispute must be decided on its facts within the parameter of the principles set forth. Here we have a Claimant, who, at the time of bidding for the Gang Foreman position, had over 37 years of service, seven of which as a Gang Foreman. During that entire time there was one safety infraction (which is the subject of this dispute).

Claimant is still in the employ of Carrier, and has yet to receive qualification as a Gang Foreman — over six years after his only infraction of the rules in more than 40 years service. Under the circumstances, it is clear that Carrier acted in an arbitrary and capricious manner.

If a position of Gang Foreman becomes available, and Claimant chooses to displace, he shall be considered qualified on the condition that he successfully completes the technical examination.

AWARD:

The Claim is sustained consistent with the Opinion herein.

PUBLIC LAW BOARD NO. 566

/s/ Nicholas H. Zumas

Nicholas H. Zumas, Chairman

/s/ A. J. Cunningham

A. J. Cunningham, Employe Member

/s/ S. J. Wilson

S. J. Wilson, Carrier Member

Signed and dated at Philadelphia, Penna. December 18, 1970