

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6466

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

GRAND TRUNK WESTERN RAILROAD, INCORPORATED

)
) Case No. 7
)
) Award No. 3
)

Martin H. Malin, Chairman & Neutral Member
P. K. Geller, Employee Member
M. J. Kovacs, Carrier Member

Hearing Date: April 16, 2003

STATEMENT OF CLAIM:

1. The discipline [twenty-nine (29) day overhead suspension, one (1) day actual suspension and disqualification as foreman and assistant foreman for one (1) year] assessed Assistant Foreman Donald Spooner for his alleged failure to comply with instructions on April 11, 2002 at Sedley, Indiana was without just and sufficient cause and based on unproven charges (Carrier's File 8365-785)
2. Assistant Foreman Donald Spooner shall now be exonerated of the charges, have the discipline removed from his record and be compensated for all wages, credits and benefits denied, and continuing until this matter is properly resolved.

FINDINGS:

Public Law Board No. 6466, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 12, 2002, Carrier notified Claimant to appear for an investigation on April 15 2002, concerning his alleged insubordination and failure to comply with direct orders at 1640 hours on April 11, 2002, at Sedley, Indiana. The hearing was held as scheduled. On May 1, 2002, Carrier notified Claimant that he had been found guilty of failure to comply with instructions and assessed a twenty-nine day overhead suspension, one day actual suspension and disqualification as foreman and assistant foreman for one (1) year.

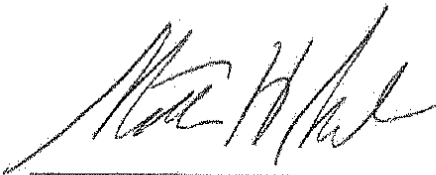
The critical issue in this case is whether Carrier proved the charge of failure to comply with instructions by substantial evidence. The Foreman testified that on the date in question he instructed Claimant to stay with and monitor the rail lifters and that Claimant refused to do so. Consequently, the Foreman told Claimant to work with the quality cart and Claimant refused to do so, cursed at the Foreman and walked away. Claimant testified that he did stay with and did monitor the rail lifters. Claimant further testified that he was angry and did not initially comply with the instruction to work with the quality cart and that it was likely that he did curse at the Foreman. Claimant further testified that he was told by an Assistant Foreman to man a switch.

With respect to the instruction to stay with and monitor the rail lifters, the record presents a question of the relative credibility of Claimant's testimony and the Foreman's. As an appellate body, we do not observe the witnesses and are in a poor position to assess credibility. Therefore, we generally defer to credibility determinations made on the property. We see no reason to withhold such deference in the instant case. With respect to the instruction to work with the quality cart, Claimant admitted that he did not comply. Accordingly, we conclude that Carrier proved the charge of failure to comply with instructions by substantial evidence.

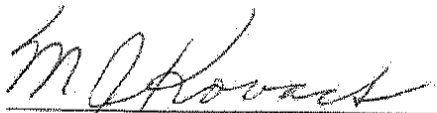
We further find that the penalty assessed was not arbitrary, capricious or excessive. Accordingly, the claim must be denied.

AWARD

Claim denied.



Martin H. Malin, Chairman



M. J. Kovacs
Carrier Member



P. K. Geller
Employee Member

Dated at Chicago, Illinois, October 9, 2003