

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The Carrier violated the effective Agreement by improperly dismissing from service Section Foreman Dalton George Johnson, Section 224, Huron, Oregon, effective August 13, 1958.
- "(2) That Section Foreman Dalton G. Johnston be reinstated in the Carrier's service to his former position as Section Foreman with all seniority rights and vacation rights unimpaired and that he be reimbursed for all wages lost account of the Carrier's improper action."

FINDINGS:

Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The carrier and employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

This case involves the discharge of Dalton G. Johnston, section foreman. The organization would have us retry this case, re-evaluate the evidence and reach a conclusion different from that reached by Division Engineer R. E. Haacke who conducted the hearing on August 26, 1958.

There is evidence to support the conclusion reached by the Division Engineer. There are some weaknesses in the evidence on which we might have given the claimant the benefit of doubt had we been trying the case. We may have given more weight to his good service record. We might have been more sympathetic with his excuses and maybe have reached a different conclusion if we had been conducting the hearing, but our duty is not to conduct a rehearing as such. Our duty is to see that the agreement has been followed and the claimant has not been maliciously, capriciously or arbitrarily deprived of his rights.

It is not our prerogative to overturn the decision reached by management where the investigation has been full and fair and in accordance with the agreement, where there was sufficient evidence to support the findings, and the measure of discipline was not so disproportionate to the gravity of the offense as to be unreasonable.

Although there was apparent hostility of the accusing witness against the claimant, we do not find that the hearing officer based his decision on malice, whim or caprice or that he was arbitrary, grossly unfair or discriminatory.

The reinstatement of section men after similar charges were preferred against them is not necessarily discrimination against the foreman, the claimant, in this case. Foremen and men are not always equally responsible or necessarily held to the same degree of accountability.

Much is said of expanding the charges immediately prior to the hearing. We find that the hearing was not conducted on the expanded charges and the hearing officer was not the official who made the charges on which the hearing was had.

Adjustment boards have recognized the fact that the hearing officer who has heard all the evidence, examined the witnesses and observed their demeanor is in a better position to weigh the evidence, judge credibility and reach a determination than the Board which is limited to the printed page and a cold record.

If we reversed this decision of the hearing officer and the discharge, we would be hard pressed to justify it in light of these accepted principles.

Therefore, we must deny the claim.

AWARD:

The claim is denied.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty  
Marion Beatty, Chairman

(s) A. J. Cunningham  
A. J. Cunningham, Organization Member

(s) A. D. Hanson  
A. D. Hanson, Carrier Member

Omaha, Nebraska  
November 21, 1960