

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 24
Docket No. 28

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension assessed Foreman L. H. Gobell for alleged non-performance of duties was without just and sufficient cause and on the basis of an unproven charge. (Organization File 2D-3762; Carrier File 81-83-129-D).
- (2) Foreman L. H. Gobell shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved, are respectively employees and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

Claimant was a surfacing gang foreman. At about 8:45 A.M., May 11, 1983, Carrier's Assistant Engineer was operating his hy-rail vehicle toward the point where claimant was working. According to the Assistant Engineer, as he approached claimant he observed him lying in the track on his back, with his head on one rail, his feet propped up on the other, and looking straight up toward the sky. On May 12, 1983, claimant was notified to appear for a formal investigation scheduled for 10:30 AM, May 16, 1983, on the charge:

"Your responsibility for non-performance of your duties when you were observed in a reclined position with feet and head on rail, May 11, 1983, near Lauren, Iowa."

The investigation was rescheduled for 10:30 AM, May 25, 1983. A copy of the transcript of the investigation has been made a part of the record. Claimant was present throughout the investigation and was represented.

In the investigation, the Assistant Engineer testified as to his observation of claimant about 8:45 AM, August 11, 1983, lying on his back with his head on one rail, his feet on the other, with his face pointed toward the sky, and that he was doing nothing.

Claimant denied that he was in the position described by the Assistant Engineer; that he was not lying on his back, but was between the tracks semi-reclined, eyeballing the rail with the use of a laser buggy.

There was direct conflict between the testimony of the claimant and the Assistant Engineer. No other witnesses were present at the investigation. It is well settled that a Board of this nature may not properly weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. Neither may the Board properly reverse the Carrier's decision simply because of conflicts in testimony. On May 27, 1983, claimant was assessed discipline of thirty days suspension.

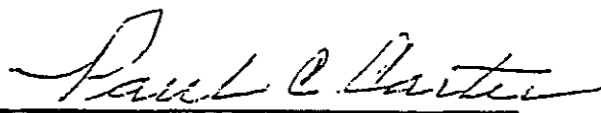
In the appeal on the property and in its submission, the Organization complains of the conduct of the hearing officer in recessing the investigation and allegedly conferring with the Assistant Engineer. If exceptions are to be taken as to the manner in which an investigation is conducted, such exceptions must be taken during the course of the investigation; otherwise, they are deemed waived.

Complaint was also made in the appeal on the property, and continued before the Board because a Mr. Hamilton, who was accompanying the Assistant Engineer when the latter observed claimant, was not present at the investigation. The record does not show that claimant or his representative requested the presence of Hamilton at the investigation, or that the investigation be recessed to obtain his testimony. The objection on appeal concerning the absence of Hamilton from the investigation came too late.

In a situation such as the one before us, we consider that the Carrier was not foreclosed from relying on the Assistant Engineer's testimony simply because it was not corroborated by the testimony of another individual.

A W A R D

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

Dated: Dec. 17, 1984