

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 49
Docket No. 57

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 sixty (60) day suspension assessed Foreman J. C. Meeker for allegedly failing to properly perform his duties and allegedly falsifying his work report was without just and sufficient cause and on the basis of an unproven charge. (Organization File 3D-4185; Carrier File 81-84-121-D).
- (2) Claimant J. C. Meeker 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 employee and the Carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

On October 13, 1983, claimant was employed by the Carrier as a track foreman at Barr, Illinois. On that date he was responsible for the installation of switch ties at Sweetwater, which the Carrier advises is about nine miles north of Barr. Claimant's crew consisted of himself and two trackmen.

The Carrier states that at approximately 11:45 A.M., on the date involved, a Quality Control Inspector and a Track Supervisor were operating a hy-rail vehicle northward for the purpose of inspecting track. When the officers reached Sweetwater at 11:45 A.M. they observed that four ties had been installed, but there were no employees at that location. They returned to Sweetwater about 12:50 P.M. and observed claimant and one of the trackmen assigned to the gang, sitting in the truck "leaning back ... in a reclining position."

On October 14, 1983, claimant was notified to report for formal investigation scheduled for 10:00 A.M., October 20, 1983, on the charge:

"To determine your responsibility for failure to properly perform your duties and for falsifying your work report when you failed to perform any service at approximately 1:00 P.M. on October 12, 1983."

The investigation was postponed and conducted on November 23, 1983. Following the investigation, claimant was assessed

discipline of sixty days suspension. A copy of the transcript of the investigation has been made a part of the record. In the investigation claimant's representative objected to claimant being questioned before other "Company witnesses." On appeal the contention was made that such a procedure deprived claimant of a fair and impartial hearing, which contention is also made in submission to this Board. In Award No. 48, Docket No. 42, we passed upon this issue, holding:

"In the investigation, on appeal, and in submission to this Board, representatives of the Organization have contended that claimant was denied a fair and impartial hearing because of being questioned first by the conducting officer before questioning Carrier's witnesses. The Board finds no proper support for such contention. We have been referred to no rule in the Agreement specifying the order in which statements will be taken, or witnesses testify in on-property disciplinary proceedings. As has been held on numerous occasions, railroad disciplinary proceedings are not court proceedings and strict rules of evidence do not apply. See Third Division Award No. 24285, among others."

In its submission to this Board the Organization also contends that claimant was deprived of a fair and impartial investigation because the conducting officer did not render the decision. The contention is also made that as the deciding officer was also the initial appeals officer, claimant was deprived of his right to an independent and unbiased review of his case. This Board has passed upon similar contentions in Awards Nos. 9, 14, 16 and 19. In our Award No. 19 we held:

"The Organization has raised procedural contentions that the officer who conducted the investigation did not render the disciplinary decision, and that the deciding officer also served as first appeals officer. This Board has heretofore passed upon similar procedural contentions in our Awards Nos. 9, 14 and 16. We consider those decisions controlling and will deny the Organization's procedural contentions herein."

We will follow our prior awards and deny the Organization's procedural contentions in the present case.

In the investigation there was substantial evidence that claimant and another employee were observed in a reclining position in the truck at about 12:50 or 1:00 P.M., October 13, 1983. The claimant denied being in a reclining position in

the truck, but contended that he was making out a work report and making up a list of material for the next day. He stated that the other employe was in the truck because he had a toothache.

While there were conflicts between the testimony of the claimant and others in the investigation, it is well settled that a Board of this nature does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Further, the Board may not properly reverse a Carrier's action simply because of conflicts in testimony.

Based upon the entire record, the Board finds no proper basis to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

Barry Elmon
Carrier Member

Paul W. Carter
Chairman, Neutral Member

H. B. Harper
Labor Member

Dated: Oct 3, 1985.