

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 65
Docket No. 53

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 and disqualification and loss of foreman's and assistant foreman's seniority assessed M.T. LeSage for 'your responsibility for your failure to perform the duties of Track Foreman, submission of a false daily work report, failure to devote yourself exclusively to the Company's service, and failure to wear the required safety equipment while on duty and employed the Track Department of the Chicago and North Western Transportation Company in Itasca, Wisconsin on the dates of August 25, 1983, August 26, 1983, and September 2, 1983, information which reached the Assistant Division Manager-Engineering on September 7, 1983' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement. [Organization File 7D-4406; Carrier File 81-84-109-D]

(2) Claimant M.T. LeSage 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.

On August 25, 1983, two members of Carrier's Police Department were in Itasca, Wisconsin on a matter unconnected with the instant claim. While there, the Police Department members overheard an employee mention that he intended to purchase beer. The Police Department members consequently performed an Employee Work Performance Audit at Itasca on August 25, 26, and September 2, 1983. As a result of the audit, Claimant was notified to report for investigation, to be conducted on September 15, 1983, of the charge as set out in the Statement of Claim above. After two postponements, the investigation was conducted on November 10, 1983. A copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

The Organization contends that Rule 19(a) provides that prior to an investigatory hearing, an employee must "be notified in writing of the precise charge against him." The charge in

this case was vague and equivocal; the Carrier therefore violated Rule 19(a). Finally, the Organization asserts that the Carrier failed to prove the charges; the special agents' reports were based on assumptions, conjecture, and falsehood.

The Carrier contends that the record evidence proves that charges against the Claimant. The Carrier states that it has a right to expect its employees to put in a full day's work; in the past, it has disciplined employees who were found guilty of similar offenses. The Carrier also states that the Claimant, as a foreman, must bear special responsibility in ensuring compliance with safety rules; the Claimant therefore was properly subject to greater discipline for knowingly permitting safety violations. The Carrier maintains that the charges against the Claimant were sufficient to allow the Claimant to prepare a defense. Finally, the Carrier contends that it was neither arbitrary nor unreasonable in its assessment of discipline in this case.

This Board has reviewed the lengthy transcript and other evidence in the record, and it finds that the charges against the Claimant were specific enough to put the Claimant on notice of the charges against him, as well as to enable him to prepare a defense to those charges. Although the charges included some language that may not have specifically related to the action or inaction of each individual Claimant (such as the failure to perform duties of track foreman could not have related to the non-foreman Claimants involved in the same incident), this Board finds that the charges did include specific language concerning failure to wear required safety equipment while on duty and failure to devote oneself exclusively to the Carrier's service, which was enough to provide the requisite notice to each Claimant as to the charges against him. Since there was evidence of those latter types of wrongdoing by the Claimant, this Board must find that the notice and charges were sufficient and in compliance with the rules.

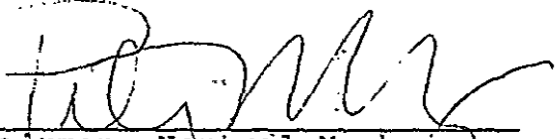
A review of the transcript provides ample evidence that the Claimant failed to wear the required safety equipment and wasted an inordinate amount of time while on duty. The Carrier's police kept lengthy time logs documenting the activities of the Claimant, and those logs, which were basically un rebutted, clearly demonstrated the Claimant's failure to devote himself to the Carrier's service on the days in question, as well as his failure to wear the required safety helmet. Based on this clear and convincing and un rebutted evidence, we must find that there was a substantial basis for the Carrier to take disciplinary action against the Claimant.

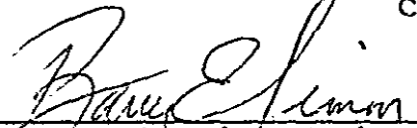
Once this Board has determined that a carrier has a substantial basis in the record to impose discipline, we must then turn our attention to the severity of the discipline imposed. It is fundamental that we do not second-guess a carrier as to the severity of discipline unless the action taken by a carrier is unreasonable, arbitrary, or capricious. In this case,

the Claimant received a sixty-day disciplinary suspension and disqualification and loss of foreman's and assistant foreman's seniority for the wrongdoing. This Board has reviewed the nature of the offenses for which the Claimant has been found guilty, as well as the Claimant's previous employment record, and based upon that analysis, we cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Hence, the discipline shall stand.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

Date: 4/10/86