

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 96
Docket No. 108

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 disqualification as foreman assessed Foreman B.D. Kelley for failure to properly perform the duties of a foreman is unduly harsh and excessive. [Organization File 4SW-1015; Carrier File 81-85-165]
- (2) Claimant B.D. Kelley is entitled to have the discipline stricken from his record, all seniority restored unimpaired and compensated for all time lost in accordance with Rule 19(d) of the effective Agreement."

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 February 20 and February 22, 1985, Claimant changed out rails at several locations. Carrier's Roadmaster made a quality control check of the work sites, finding scrap at the sites, improperly spiked ties, and improper material plugging spike holes. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility in connection with your failure to properly perform your duties as Foreman Tama Section when changing out rails on February 20, 1985 at M.P. 133 and on February 22, 1985 at M.P. 134.4 and M.P. 133.4.

The investigation was held as scheduled, and 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 the allegations do not constitute

failure to properly perform a foreman's duties. The Organization asserts that the Roadmaster's SMBO project requires periodic scrap pick-up; Claimant planned to clean the scrap at a later time in compliance with the SMBO project. The Organization points out that if Claimant had required his workers to clear the scrap immediately, it would have required overtime hours; moreover, Claimant was concerned about preventing further delays to trains. The Organization further argues that Claimant's keg of tie plugs were removed from his truck and missing on the day in question; Claimant's use of available wood in place of the unavailable tie plugs also does not constitute failure to perform duties as a foreman. The Organization asserts that Claimant made discretionary decisions, in Carrier's best interests, while performing his duties; the assessed discipline therefore is harsh and excessive. The Organization argues that where discipline is excessive, arbitrary, capricious, or unwarranted, it must not stand. The Organization therefore contends that the claim should be sustained.

The Carrier argues that the charges against Claimant were proven, and the assessed discipline was warranted. Carrier asserts that the record shows Claimant violated several Engineering Department rules, demonstrating his inability to satisfactorily perform the duties of a foreman. Carrier argues that Claimant exercised poor judgment and failed to make sure that quality maintenance work was done. Carrier argues that it reasonably concluded that Claimant could not meet the requirements of a track foreman, and the assessed discipline was neither arbitrary nor unreasonable. Carrier therefore contends that the claim should be denied in its entirety.

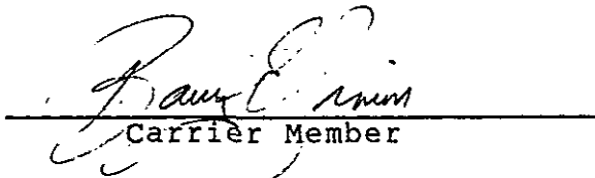
This Board has reviewed the evidence and testimony in the record, and we find that there is insufficient evidence in the record to support the finding that the Claimant was guilty of the offenses with which he was charged. In his position of foreman, the Claimant is given some degree of decision-making in determining when he must pick up the scrap and other debris that is left behind after the work has been completed. The Claimant apparently decided to do it later. That decision may not have been the best decision, but it was within his range of responsibility; and it certainly was not a decision necessitating discipline. Moreover, it is not clear that the Claimant was responsible for the improper spiking of the ties and other problems with the work.

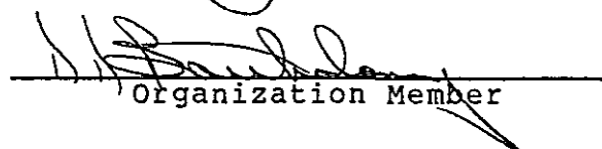
This Board finds that there is insufficient evidence in the record to support the guilty finding, and the claim shall be sustained.

Award:

Claim sustained.


Neutral Member


Carrier Member


Organization Member

Date: October 22, 1987