

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company
(former Missouri Pacific Railroad Company)

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

(1) The dismissal of Trackman/Operator R. L. Jones for violation of General Rules 600 and 607 in connection with alleged failure to comply with instructions, being insubordinate and quarrelsome at approximately 4:00 P.M. on October 13, 1989, was arbitrary, extremely harsh, on the basis of unproven charges and in violation of the Agreement (Carrier's File 900109 MPR).

(2) As a consequence of the violation referred to within Part (1) hereof, the Claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority, vacation, insurance and all other benefits unimpaired and he shall be paid for all wage loss suffered as a result of his unjustified dismissal."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant in this dispute was a Trackman/Operator assigned to System Gang #9110 in Carrier's Leeds Yard, Kansas City, Missouri. On October 13, 1989, Claimant was removed from service for allegedly failing to comply with instruction of the Track Supervisor. Following Investigation held on November 7, 1989, the Claimant was notified of his dismissal from Carrier's service.

At the outset, the Organization has raised procedural objections of timeliness, maintaining that Carrier has violated Rule 12 of the Agreement between the Parties, because it did not hold the Investigation "within a reasonable time." There is no evidence on the record before us to suggest that Carrier proceeded in anything other than a timely fashion in notifying Claimant of the charges against him, and in holding the subsequent Investigation into his "insubordinate and quarrelsome" behavior toward his supervisor. Third Division Awards 27610, 25863, and 25149.

With respect to the merits of this case, the Track Supervisor testified amply on the record concerning the Claimant's response to the Track Supervisor's instructions concerning the work to be performed. While the Claimant flatly denied the Track Supervisor's testimony, the Board has long held that credibility issues are generally to be regarded as within the province of the Hearing Officer, and the testimony of one witness may be sufficient to establish a preponderance of the evidence. Third Division Awards: 21054, 25102, 24991, 25873, 25316.

It is evident from the record before us that Claimant's conduct went far beyond simple insubordination. He was clearly also abusive and threatening to his supervisor, who was issuing a reasonable directive. In light of the above, and in view of the Claimant's past discipline record, we see no reason to overturn Carrier's assessed discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1991.