

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
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(Richmond, Fredericksburg and Potomac Railroad Company

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

(1) The discipline (suspension and demotion) imposed upon Track Foreman R. K. Gray for alleged conduct unbecoming an employe was harsh, unjust and on the basis of unproven charges (System File R-D-5093).

(2) The Claimant shall have his seniority restored unimpaired as track foreman, foreman inspector, assistant foreman and assistant foreman inspector; he shall have the charge leveled against him cleared from his record, and he shall be paid for all wage loss suffered, including the differential loss between his track foreman's rate of pay and his machine operator's rate of pay."

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.

At the time of the dispute at issue, the Claimant was assigned as a track foreman under the supervision of Engineer Track and Structures, at the Potomac Yard. Under date of November 1, 1989, Claimant presented a time Claim to Carrier for 2.67 hours of work performed out of seniority, on October 26, 1989. The Claim read, in pertinent part, as follows:

"I am officially submitting time against employee who worked in my stead on October 26, 1989, knocking off the skate on 48 track north class yard, which was overtime in the amount of 2.67 hours. I am hereby requesting pay for said time worked."

Carrier denied the time Claim on the basis that it had no knowledge of the work claimed having been done, to wit, removing a skate from No. 48 track, on October 26, 1989.

In response, Claimant submitted to Carrier a statement, dated December 1, 1989, in which a fellow employee, Mr. Raymond Black, allegedly testified to having performed the disputed work. The signature "Raymond Black" appeared at the bottom of the December 1, 1989 document following the words: "I, Raymond Black, did in fact work the above mentioned job [on October 26, 1989]." Carrier again denied the time Claim, asserting that it still did not have evidence that the work claimed had, in fact, been performed. Moreover, Carrier maintained that the signature "Raymond Black" was not actually Mr. Black's signature.

On December 13, 1989, Carrier charged the Claimant with "conduct unbecoming an employee", specifically, falsification of a time card. At an Investigation held on January 11, 1990, employee Raymond Black disavowed any knowledge of the statement and signature of December 1, 1989, attributed to him. Following the Investigation, Claimant was assessed a thirty working day suspension without pay and disqualified as a Foreman, Foreman Inspector, Assistant Foreman and Assistant Foreman Inspector.

While the issue of whether or not Mr. Black actually performed the work claimed on the day the Claimant alleges he performed it is not clear on this record, it must not cloud the essential issue. Carrier has shown convincingly on this record that Claimant manufactured and forged the statement typed up and submitted by him as evidence of the legitimacy of his Claim. In fact, Mr. Black has testified without contradiction that the first he was asked about the work on that date was ten minutes before he appeared at the Investigation.

In light of the foregoing, the Board does not find the discipline assessed to be excessive, arbitrary, or unreasonable. Falsification of a time Claim, in whatever guise, is a serious breach of an employee's duty. Enlisting an unwitting "co-conspirator" compounds the infraction. Given the seriousness of the offense, the thirty working day suspension certainly is not excessive. Claimant has a previously clean 16 year record of employment with Carrier, and the Organization argues that permanent disqualification is excessive. This single incident, however, throws into serious question his competence to serve in a Foreman or Assistant Foreman capacity. Accordingly, the Board sees no reason to diminish or overturn Carrier's assessed discipline in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bevel - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.