

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO GREAT WESTERN RAILWAY COMPANY**

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

(1) That Section Foreman P. W. Reich, Elma, Iowa was improperly disciplined as a result of a motor car accident on June 9, 1947;

(2) That Section Foreman P. W. Reich be reimbursed for all monetary loss suffered by him account of his improper suspension of thirty (30) days.

OPINION OF BOARD: Claimant, a section foreman, was suspended for thirty days because of his responsibility for a motor car accident. There is no contention by the Employees that Carrier has violated the provisions of the Discipline or Hearing Rule, or that the hearing accorded claimant was biased or partial. In effect, the Employees contend that Carrier's finding of guilt is not substantiated by the evidence.

On June 9, 1947, claimant and two of his laborers were working at a point approximately four miles away from his established headquarters. He and his two men put a motor car and push car on the track and proceeded homeward. After proceeding about one mile, the motor car was struck by a light engine proceeding in the opposite direction. The push car was undamaged, having been removed from the track before the collision. Claimant was found guilty of violating Carrier's General Rules H and S, both of which generally refer to duty of employees to prevent accident and admonishing that in case of doubt, the safe course must be taken; Rules 14, 58, 63 and 67 which are also rules of a general nature pointing up the responsibility of foreman to see to it that men under them observe all safety rules and admonishing against taking of risks and requiring the exercise of care and judgment; Rule 73, which requires obtaining of line-ups when practicable; and Rule 79, calling for particular caution in operating track cars around curves and in fog and prescribing precautionary measures to be taken.

There is no question but that the Carrier has the right to promulgate rules governing the operation of equipment on its property and requiring the exercise of care and judgment on the part of employees charged with the responsibility for such equipment and the safety of personnel in their charge.

The principles followed by this Board in the review of discipline cases are well known. We will not substitute our judgment for that of the Carrier unless there is clear evidence of the abuse of discretion. If there is sufficient evidence of probative force upon which a finding of guilt may be based, even though there are conflicts, the findings of the Carrier will not be disturbed.

We have studied this record with meticulous care to be secure in our own contemplation that no prejudice was suffered by this claimant merely because an accident happened and he was in charge of the equipment damaged as a result thereof. We believe, however, that there is sufficient in the record to indicate that Carrier had a basis for finding the claimant guilty of neglect of duty resulting in damage to its equipment. There is evidence in the record which would justify a finding of violation of Rule 73. Whether or not we would come to the same conclusion is beside the point under the principles stated in the previous paragraph. However, assuming that it were not practicable for claimant to have secured a train line-up which would be effective, proceeding as he did without one, being short one man, and being warned as he was of the possibility of the running of an extra train, it was incumbent upon him to exercise extreme caution in proceeding. The Carrier concluded that he did not exercise such caution in violation of the general rules and there is sufficient proof in the record upon which to base such a conclusion. As to the violation of Rule 79, Employees contend that claimant was not operating around a curve. However, he was approaching a curve. In view of the conditions under which claimant was proceeding, it seems obvious under that rule that a flagman should have been sent out sufficient distance in advance of the car to insure protection prior to its entry into the curve. We do not believe that the rule should be considered as applying only when the car has actually entered the curve as contended by the Employees.

We find no basis upon which to set aside the Carrier's action in this case:

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.