

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated the effective agreement when it dismissed Track Laborer, Lester Lane from service on October 10, 1957 on the basis of unproven charges that he had failed to properly flag a train on September 24, 1957.

(2) Track Laborer Lester Lane shall now be restored to service, the charge placed against him stricken from the record, that his seniority, vacation and other rights be unimpaired, and that he be compensated for the wage loss suffered, all in accordance with the provisions of Rule 11 (c) of the controlling Agreement.

OPINION OF BOARD: Claimant, a Track Laborer, was dismissed from the Carrier's service on October 10, 1957, allegedly for failure to flag properly Train No. 346 on September 24, 1957, near Moultrie Cut-off in Florida. According to the Carrier, Claimant's negligence resulted in a collision between Train 346 and a scarifier machine, one of several machines that were on the track in that Train's immediate path. The claim is for reinstatement with back pay and full rights, it being the Petitioner's position that the charges against Claimant were not proved and that in any event the punishment meted out was excessive and arbitrary.

Claimant was duly notified of the charges against him and was accorded a fair hearing and investigation. Considerable testimony was adduced at the investigation and is contained in the rather voluminous record. It is unnecessary that this testimony be repeated here. Suffice it to say that although Claimant was instructed to flag all northbound trains and was placed in a strategic location to accomplish that result, the engineer, fireman and head trainman of Train 346 all testified that Claimant did not flag their train which was proceeding north. Such testimony of the train

crew is credible and although some inconsistencies are noted contains no glaring defects. On the other hand, there is competent testimony by Claimant that he did flag the train, testimony by his Track Foreman and others that he is a competent flagman and testimony by six track laborers as well as two of the operators of the aforementioned machines to the effect that after the train had stopped, they heard its fireman state that he saw the flagman flag the train but when he (the fireman) then told the engineer that the machines were still on the track, the engineer replied that it was all right, he would clear them. At the investigation the fireman denied the above mentioned statement attributed to him by the laborers and machine operators.

Accordingly, there is a sharp conflict in the testimony that was adduced at the investigation.

As a legion of prior awards makes clear, it is not our province to weigh the conflicting evidence (See, e. g., Awards 7020, 6866, 5426, 3827, 3149, 1987). Since the record discloses ample competent evidence, denied by Claimant and other witnesses but nevertheless of probative value, that supports the charges against Claimant, we will not upset the findings of the Carrier as to the Claimant's negligence. While the discipline meted out by the Carrier might well have been less severe than dismissal, particularly in view of the sharp conflict in testimony found in the record, we can not validly hold that it is arbitrary or incommensurate with the offense. On the question of appropriate discipline, particularly in an accident case, we are not disposed to substitute our judgment for that of the Carrier which is charged with the responsibility for the safety of its employees and property as well as the public. (See Awards 891, 8711, 2632, 2621.)

The claim will accordingly be denied.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1959.