

Award No. 18320  
Docket No. MW-18708

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John H. Dorsey, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY**

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

(1) The five (5) day suspension imposed upon Section Foreman J. G. Fletcher and Section Laborers J. F. Akers and S. S. Baird was improper and without just and sufficient cause.

(2) The personal record of the claimants be cleared of said suspensions and reimbursement be made for wage loss suffered in accordance with Rule 34(d).

**OPINION OF BOARD:** On November 22, 1968, Claimants and other members of a section crew were traveling north from Westville on a motor car identified as M-755. At approximately 8:50 A.M. the car was approaching a public crossing located at MP 129, pole 36. The foreman disengaged the drive belt of the car and prepared to stop. Not being in a position to observe the crossings for track obstructions, he relied upon signal from occupants of the car in forward positions. Receiving signal to proceed, he engaged the belt and proceeded to move over the crossing. The car was derailed when it struck an object lodged in the crossing flangeway.

The occupants of the car—Claimants and two other crew members—were served with the following notice under date of November 27, 1968:

"Formal investigation will be held in the Trainmaster's Office, Danville, Illinois, 9:00 A.M., December 10, 1968, to determine facts and place responsibility, if any, in connection with derailment of motor car M-755 assigned to you which occurred at 8:50 A.M., November 22nd, 1968, at public crossing MP 129 P 36 on the Westville Subdivision. (Emphasis ours.)

You may have a representative of your choice and any witness you desire in line with current MoFW Agreement."

Hearing was held as scheduled with all those notified participating.

Subsequent to the hearing each of the Claimants received notice:

"You are hereby advised that your record has this date been assessed with 5 days actual suspension account your violation of certain MofW Rules which resulted in your motor car M-755 striking a rock on public crossing at grade at MP 129.36 Westville Subdivision resulting in derailment of the motor car and personal injuries being sustained by Trackmen Baird and Akers about 8:50 A.M. November 22, 1968, as determined in formal investigation conducted December 10, 1968. This actual suspension to commence December 30, 1968 ending January 3, 1969, both dates inclusive. (Emphasis ours.)

Your record now stands 5 days actual suspension."

The transcript of the hearing is barren of any substantial evidence of probative value to support Carrier's findings: (1) "account your violation of certain MofW Rules;" (2) the car did in fact strike a rock on the public crossing. This being a discipline case, Carrier bore the burden of proof. Carrier's findings appears to be predicated on an assumption that because there was a derailment it must conclusively be presumed that it was caused by nonfeasance or misfeasance of one or more of the occupants of the car. Such is sophistry, not substantial evidence of negligence. We, therefore, will sustain the Claim.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1970.