

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21770
Docket Number MW-21720

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company
(Lake Region)

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

(1) The suspension of fifteen (15) days imposed upon Section Foreman **Sixto Torres** was capricious, arbitrary, without just and sufficient cause and on the basis of **unproven** charges (System File MW-BVE-75-43).

(2) Section Foreman **Sixto Torres** shall now be allowed the benefits prescribed in Agreement **Rule 22(e)**.

OPINION OF BOARD: Claimant, a Section Foreman, was notified to report, to an investigation **concerning** two derailments, and an assertion that he had furnished false information concerning track conditions.

Subsequent to the investigation, the Claimant was assessed a fifteen (15) day actual suspension.

On December 9, 1974, Claimant observed what he considered to be a defective condition. He made a request for a "slow order" and advised the Roadmaster. The Roadmaster approved the replacing of a stock rail - but not the switch point. On the next day, Claimant and his gang installed the new rail and released the track for service. However, certain problems were experienced thereafter, and Carrier concludes that Claimant was directly responsible for derailments.

The Roadmaster determined - after the derailments - that the base of the stock rail was not properly seated in the plates.

We do not find that the record supports a conclusion that the Claimant furnished false information. Further, & are not able to find that the record shows a degree of negligence so as to warrant a loss of active service and pay for fifteen (15) days.

6 The record contains a significant amount of speculation as to the actual cause for the derailments. We do find that there was some degree of **responsibility** on the **Claimant's** part, but we find that a reprimand would have been the appropriate disciplinary action. A fifteen (15) day suspension was excessive. We approve only a reprimand.⁷

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 **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 disciplinary action in excess of a reprimand was excessive.

A W A R D

Claim sustained to the extent stated in the **Opinion**, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.

