

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22756
Docket Number CL-22789

George S. Roukis, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8689) that:

1. Carrier acted in an arbitrary, capricious, unjust and discriminatory manner when, without just cause, it assessed a fifteen (15) day deferred suspension against the service record of Train Dispatcher R. L. Hood.

2. Carrier shall now be required to remove and expunge the fifteen (15) days deferred suspension from the record of Train Dispatcher R. L. Hood and any reference thereto.

OPINION OF BOARD: Claimant, who is employed as a train dispatcher on the Scioto Division of Carrier, was charged with failure to comply with Operating Rule 517 and received a fifteen (15) day deferred suspension following an investigative hearing held on February 2, 1978. This disposition was appealed on the property and is presently before us for appellate consideration.

In reviewing this case, particularly the facts and circumstances leading up to the collision on January 14, 1978, we do not find sufficient probative evidence to conclude that Claimant was responsible for the incident. We recognize, of course, that the weather at that time was extremely severe and that train 4XWP was stopped and having trouble lining switches, but we don't find explicit evidence that Claimant's actions, relative to the Assistant Roadmaster's operation of the Hy-rail truck, were responsible for the mishap. Admittedly, the situation required a pronounced degree of caution, especially given the inclement weather conditions, but we don't believe that Claimant's course of conduct precipitated the accident. This Board has consistently emphasized the importance of safety in rail operations and our decisional law reflects the stern position we have taken where the evidence clearly supports a finding of unsafe deportment.

In the instant case, the record does not show that the Hy-rail truck's striking of the rear of train 4XWP was due to Claimant's incautious behavior and we are thus compelled to sustain the claim. It is axiomatic in disciplinary proceedings, for the party proffering the charges to prove by substantial evidence that the person committed the offense. We do not find that this proof burden was adequately met consistent with this evidentiary standard. (See, for example, on this point, Third Division Awards 19522 and 18320 among others.)

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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.