

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23504
Docket Number MW-23872

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Louisiana & Arkansas Railway Company

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

(1) The dismissal of Foreman B. L. Collins for his alleged 'failure to properly install rail anchors on track after tie insertions' on September 4, 1979 was without just and sufficient cause and wholly disproportionate to such charge (Carrier's File 013.31-219).

(2) Foreman B. L. Collins shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD: The record shows that claimant entered Carrier's service as a track laborer on April 1, 1968. He was promoted to foreman on September 25, 1978.

Following an investigation on October 3, 1978, claimant was dismissed from the service. The charge against the claimant read:

"You are instructed to appear at an investigation that will be convened commencing at 10:00 A.M., Wednesday, October 3, 1979 in the L&A Office Building, 1401 Foss Street, Baton Rouge, Louisiana to ascertain the facts and determine your responsibility in connection with your failure to properly install rail anchors on track after tie insertions at Mile Post 852.2 and 852.4 on August 31 and September 4, 1979 by your gang after you were given a letter dated August 20, 1979 instructing you to apply railanchors.

I remind you of the following from the Rules and Regulations for the Maintenance of Way and Signal Department of this Company, effective December 1, 1973:

General Notice - To enter or remain in the service is an assurance of willingness to observe the rules; and a failure to observe the rules justifies a removal from the service.

Rule B - They must have a proper understanding and obey all rules and instructions applicable to their duties. If in doubt as to the meaning of any rule or instruction, employee must apply to proper officer for an explanation.

"Rule E - Employees must render every assistance in their power in carrying out the rules and instructions. Courteous co-operation between employees is required for proper functioning under the rules and instructions.

The safeguarding of life and property is of foremost importance, and the first duty and responsibility of employees is to prevent accidents.

Rule 320 - They have charge of and are responsible for the safety of the men assigned to them. They will be held responsible for the thorough and economic execution of the work assigned to them.

Rule 363 - Extra gang and welding gang foremen will report to and receive instructions from the roadmaster on whose territory they are working. They will have full charge of all forces under them and will be held responsible for carrying out in an efficient manner all work assigned to them. They must make out prescribed report covering labor and materials.

The Company intends to call Roadmaster T. L. Barker as a witness in this matter.

You are advised that you have the right to have a representative of your Union present to represent you and to request that witnesses in your behalf be present."

In the investigation the Roadmaster testified that he had repeatedly instructed the claimant (he stated at least 50 times) about anchoring ties at the close of work; and the instructions were to be sure that at the close of each work day "he anchored up behind him every other tie;" and that at the close of August he found various locations where the ties were not properly anchored. The claimant testified that he replaced all rail anchors that he removed.

During the course of the investigation, the charge for September 4, 1979, was dropped.

We find that substantial evidence was adduced at the investigation to support the charge for August 31, 1979, which, coupled with claimant's prior record, fully warranted dismissal.

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 here-in; and

That the Agreement was not violated.

A W A R D

Claimdenied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.