

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24080
Docket Number MW-24101

Herbert L. Marx, Jr., Referee .

[Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(Detroit, Toledo and Ironton Railroad Company

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

(1) The thirty day suspension (5 days actual and 25 days record) imposed upon Section Foreman **Hobert** Back for alleged failure to properly line 'the south switch of **Thackery** Siding' on February 5, 1979 was unwarranted, on the basis of **unproven** charges and in violation of the Agreement.

(2) Section Foreman **Hobert** Back shall now be allowed the benefits prescribed in Agreement Rule **34(e)**.

OPINION OF BOARD: Claimant is a Section Foreman who was directed, with two crew members, to perform switch-cleaning duties involving snow **removal**. He was charged with failure to realign a switch which resulted in a train "encountering and running through an **improperly** lined main track **switch**" and was subject to an investigative hearing. Cited in the Carrier's investigation 'notice **were** Rule "N" and Rules **866** and **869**.

'In particular, Rule **869** reads **in** pertinent part that **Maintenance of** Way Foremen "must personally attend and supervise the opening and closing of switches."

The **Organization** argues that the **Claimant** was not subject to a **fair** and proper investigative hearing, since one Carrier representative issued the notice of the hearing, conducted the hearing, reviewed the results, and determined the disciplinary penalty. While **there** are instances in which a hearing officer's multiple role may well interfere with his **impartial** conduct **of** the hearing, the Board does not find this to be the **case** here. The hearing **officer was** in no way connected with the incident itself; the Claimant and the Organization were not **impaired in** their presentation in any way; and the determination of penalty after a hearing by the hearing officer is not prohibited by **rule**.

The record shows that the Claimant and his crew **members** were directly involved **with** cleaning the switch just **prior** to its being overrun by a train. The Carrier had proper grounds for holding that the Claimant was responsible for failing to determine that the switch was properly set after the cleaning had been **completed**. **This** failure could have led to serious consequences and did in actuality result in train delay and switch damage.

The thirty-day suspension (of which only five days was **an actual** suspension) was not inappropriate.

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

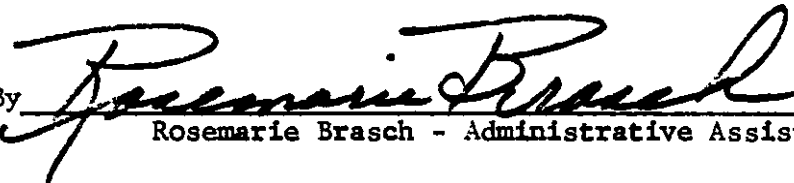
That the **Agreement** was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at **Chicago**, Illinois, this 5th day of January 1983.

