

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24412  
Docket Number NW-24531

William G. Caples, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Consolidated Rail Corporation (formerly The New York,  
{ New Haven & Hartford Railroad Company)

STATEMENT OF CLAIM: The System Committee that:

(1) The discipline (reprimand) imposed upon Trackman P. C. Pomeroy for alleged responsibility 'for an injury' sustained by him on June 9, 1980 and for alleged 'violation of Safety Rules 3000, 3006 (d) and 3568, on June 9, 1980' was arbitrary, capricious, unwarranted and on the basis of unproven charges (System Docket No. NH-53).

(2) The reprimand referred to in Part (1) hereof shall be expunged from the claimant's record."

OPINION OF BOARD: On June 24, 1980 there was an investigation conducted to determine, first, Claimant's "responsibility, if any, for an injury allegedly sustained on June 9, 1980, at Mansfield, Massachusetts, and a review of" Claimant's "past safety record and personal injury record" and, second, Claimant's "responsibility, if any, for" his "alleged violation of Safety Rules 3000, 3006(d) and 3658, on June 9, 1980 at Mansfield, Massachusetts." As a result of the investigation the Carrier found the Claimant guilty of the charges in both cases and assessed discipline of a reprimand.

This Division has a well established rule that in discipline cases the Carrier must prove by direct, positive, material and relevant evidence that the Claimant was guilty of the charges preferred against him. We find that the Carrier failed to do so in this case, and such failure to prove the charge makes the discipline unwarranted.

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 Employee involved in this dispute are respectively Carrier and Employee 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: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.