

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24722
Docket Number MW-24528

George V. Boyle, 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: "Claim of the System Committee of the Brotherhood that:

(1) The disciplinary demotion of Carpenter Foreman W. Robson, his disqualification as carpenter foreman and the suspension of thirty (30) days imposed upon him was excessive and unwarranted (System Docket No. NH-51).

(2) Mr. W. Robson's seniority as carpenter foreman be restored and unimpaired, he shall be paid for all time lost and be allowed the difference between what he would have received at the carpenter foreman's rate and what he was paid in a lower rated position beginning with the effective date of his suspension and continuing until he is returned to work as a carpenter foreman with seniority as such unimpaired."

OPINION OF BOARD: The Claimant, an employe of thirteen years (13) service, was engaged with his crew of four carpenters and a truck driver in assisting the track department in handling bridge ties at Darien, Connecticut. The crane being used was cleared to operate on Track 2 but was swinging loads of ties to the outside of Track 4, "fouling" it with each load. Neither the Track Foreman, in charge of the crane crew, nor the Claimant had obtained permission from the Block operator or the Train Dispatcher to obstruct Track 4. This was contrary to Rule 101 which reads:

"Trains must be fully protected against any known condition not covered by the rules which interferes with their safe movement at normal speed. Any work on or adjacent to a track which may create a condition interfering with the safe movement of trains at normal speed, or the use of equipment which may foul adjacent tracks, must not be attempted without permission of the Train Dispatcher. Protection against trains in both directions must be provided before the track is obstructed and trains approaching the obstruction must be notified by train order or bulletin order. Engine whistle or horn must not be used to recall members of crew providing such protection."

As a train approached, the crane stalled with a load obstructing Track 4. The train collided with the load at 70 MPH causing considerable damage to the locomotive, passenger cars and the crane. Additionally several members of the train crew and some passengers were injured.

After notice and a hearing the Claimant was found in violation of Carrier Rule 101, Conrail Rules for Conducting Transportation, CT-400. He was assessed the penalty of "Thirty (30) days suspension without pay and disqualification as Carpenter Foreman."

The Organization alleges: that the Carrier presented no evidence that the Claimant was responsible; that they avoided testimony favorable to the Claimant by not calling Track Foreman Kalinowski to testify; and that even if, arguendo, the Claimant had exercised poor judgment the disciplinary penalty was excessive, capricious, improper and unwarranted.

As to the Claimant's responsibility in this mishap, although he was one of two foremen involved in the work, he cannot escape his obligation under Rule 101 by virtue of the lack of direct control over the equipment being used. The preponderance of testimony indicates that he was negligent in not seeking the protection which is required under the rule and the negligence of the other foreman does not relieve nor mitigate his own.

With respect to the testimony of Track Foreman Kalinowski, he was present at the hearing and had the Claimant or his representative desired his testimony, he was at their disposal. Having failed to exercise the option afforded them the Organization cannot fault the Carrier for their lack of action. When asked at the close of the hearing: "Mr. Campbell: Mr. Robson or Mr. Garibaldi, are there any witnesses which you care to question on your behalf?" The answer was, "Mr. Garibaldi: No." (Transcript p. 56).

Regarding the penalty, when the seriousness of the occurrence is considered, the thirty (30) day suspension is a mild disciplinary penalty indeed. The Claimant's demotion is also warranted but it should not be perpetuated ad infinitum. Accordingly, the Board will restore the Claimant without compensation to his former position of Carpenter Foreman with his seniority rights intact.

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

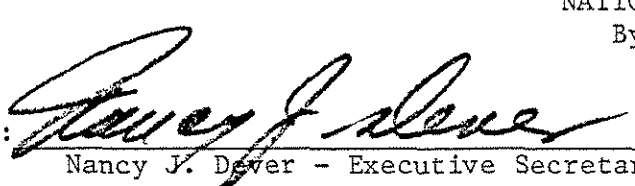
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.