

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25099
Docket Number MW-25170

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(National Railroad Passenger Corporation - Northeast Corridor

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

(1) The disciplinary disqualification of Track Foreman B. L. Harrington for alleged 'Violation of "Amtrak Specifications for Construction and Maintenance of Track" (MW 1000)' was without just and sufficient cause and on the basis of unproven charges (System Docket 255D).

(2) **The** claimant's record shall be cleared of the charge leveled against him, his seniority as track foreman and assistant track foreman shall be restored and unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: By letter dated July 9, 1981 the Claimant, B. L. Harrington was notified to attend an investigation on July 28, 1981 to determine facts and place responsibility, if any, with respect to his alleged violation of Sections 64.4, 103.3 and 213.120 of Amtrak Specifications of Construction and Maintenance of Track. These Sections of the Carrier's Specifications deal with maintaining and raising track and with cross section ballast. The result of the alleged violation of the Specifications at bar was the derailment of Train BEPY 5 at **11:49** A.M. on June 26, 1981 near the south bound home signal No. 3 Track, Landover, Maryland. Seventeen (17) cars were involved in the derailment which caused extensive damage to equipment and track and also extensive delays to passenger and freight trains. **The** immediate cause of the derailment was the buckling of the track in question about 18 inches.

As a result of the hearing which was held as scheduled the Claimant was notified on August 10, 1981 that he had been found guilty as charged and that he was disqualified, as of that date, "in all capacities of foreman and assistant foreman".

A review of the record shows that a Carrier Investigation Committee found that the primary factors contributing to the derailment on June 26, 1981 was inadequate ballast and track repair work which had disturbed more than five (5) ties in a row at the point of derailment. As foreman on the day in question these factors were under the direct control of the Claimant. During the hearing the Claimant maintained that there was sufficient cross section ballast on the track in question and that while he was foreman not more than five (5) consecutive cross ties had been jacked up in any one spot. **This** testimony is contradicted, however, by that of the Assistant ~~Chief~~ Engineer and the Assistant Division Engineer. By established **precedent** this Board cannot set itself up as a trier of fact **when** it is a question of patently conflicting testimony (Third Division 16281. 21238. 21612). So long as the testimony of Carrier's witnesses is not so clearly devoid of probity that its acceptance would be per se arbitrary and unreasonable, this Board cannot substitute its judgment in cases such as this. Further. the record also establishes that the Claimant had not taken the additional

precaution, as Foreman, of applying a thirty (30) mile per hour slow speed order to the track in question. Given the record evidence before this Board, therefore, no other conclusion is warranted than that the Claimant is guilty as charged.

During the handling of the case on property the Carrier offered to reduce the discipline, on leniency basis, from a permanent disqualification to a one (1) year disqualification to ~~run~~ from June 26, 1981 (the date of the derailment) to June 26, 1982. Given the circumstances of the instant case this offer to remove the disqualification by the Carrier appears to the Board to have been reasonable and just and the refusal to accept the offer of the Carrier was ill-advised on the part of the Claimant. It is the decision of the Board, therefore, that the Claimant be disqualified from the position of Foreman and Assistant Foreman from June 26, 1981 until the issuance of this Award. **The** Claimant shall then be re-qualified as Foreman or Assistant Foreman by the Carrier, with seniority unimpaired. All claims for wage loss are denied.

FINDINGS: **The Third** Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence. finds and holds:

That the Carrier and the **Employees** 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 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 23rd day of October, 1984.