

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25143
Docket Number M-23993

Wesley A. Wildman, Referee

(**Brotherhood of Maintenance of Way Employees**)
PARTIES TO DISPUTE: (
(**Soo Line Railroad Company**)

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

(1) The five (5) days of suspension imposed upon Section Foreman Norman Nelson for alleged violation of "Rule 107" was arbitrary, unwarranted and on the basis of unproven charges (Carrier's File 800-16-A-63).

(2) The claimant's record be cleared of the charge leveled against him and reimbursement be made for all wage loss suffered and for mileage expense incurred traveling between Sheldon and Stevens Point, Wisconsin.

OPINION OF BOARD: Claimant in this case is a Section **Foreman** with an unblemished record of thirty-two years of service with Carrier. At the end of a day of rail loading, Claimant delegated to one of his **crew** the task of placing a motor car on a spur **while** Claimant completed some necessary paperwork in the section shelter. The section laborer **asked** to secure the motor car for the night was acknowledged by all to be a qualified and responsible employee. Unfortunately, following the transfer and securing of the motor car, the switch **used** was left lined for the spur rather than being lined and locked for the main. This was, of course, a serious violation of an important operating Rule, 104/a):

"Unless otherwise provided, **the** normal position of a main track switch is on the main track and **must** be lined and locked in that position accept (sic) when changed for immediate movement.'

In addition to (**presumably**) meting out discipline to the section laborer **involved**, Carrier imposed a **five** working day suspension without pay on Claimant for violation of operating Rule 107, which provides:

"**After** using a switch, the employee in charge must see that the switch is returned immediately to its **normal** position and locked and that points fit. Other employees must check with each other to see that this is done.'

The Organization representing Claimant asserts that a foreman is **unarguably** justified in asking a qualified employee to perform the kind of equipment moving and switching chore involved here, and that a foreman is not obligated by Rule 107, or normally expected in practice, to check on and personally verify the **correct** performance of every detail and aspect of the task assigned.

Clearly, it would be inappropriate for us to attempt here to define a section foreman's full supervisory responsibility, under any or all circumstances, with respect to Rule 107. However, where, as here, the switch in question is in close physical proximity to the section shelter and where, as here, Claimant acknowledges that it is his normal practice to check this switch under the circumstances prevailing on the day in question, it does not seem to us unreasonable to ask that the foreman share the responsibility for this potentially disastrous incident with the employee who was proximately negligent in carrying out his duties.

Finally, despite Claimant's long and distinguished record of service with the Carrier, we do not find the discipline of a five working day suspension without pay to be arbitrary, capricious, or unnecessarily harsh.

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

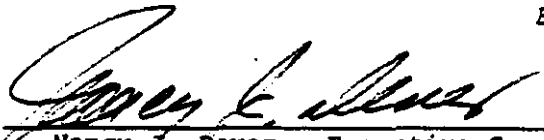
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.