

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25273
Docket Number MW-24782

Rodney E. Dennis, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Seaboard Coast Line Railroad Company

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

"(1) The five (5) days of suspension imposed upon Foreman E. H. Sams for alleged violation of 'Rule 1119' on January 26, 1981, was arbitrary, capricious, unwarranted and on the basis of unproven and disproven charges (System File C-4(13)-EHS/12-39(81-33) G).

(2) The Claimant's record be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered including wage loss suffered attending the hearing held on February 23, 1981."

OPINION OF BOARD: Claimant, Foreman E. H. Sams, was assigned on January 26, 1981, to strip mud from tracks and surface the track at several locations between Ridgeland and Hardeeville, South Carolina.

At about 2:40 p.m. on January 24, 1981, the Roadmaster observed that Sams' section force had tracks jacked without the benefit of a line-up, block-up, conditional stop order, or flag protection. As a result, Claimant was charged as follows:

"Account of your actions while surfacing main line between Ridgeland and Hardeeville on Monday, January 26, 1981, when you allowed your force to set a jack obstructing the main line without proper protection, you are hereby charged with the violation of Rule 1119 of the Book of Operating Rules of the Seaboard Coast Line Railroad Company and you are also charged with violation of verbal instructions issued to you by me that no work would be performed on the main line without proper lineup or blockup. The applicable portion of Rule 1119 is quoted below:

"Rule 1119

Rule 1119- when making repairs to track, bridges or other structures that interfere with the safe passage of trains at authorized speeds, they must provide protection in both directions as prescribed by Rule 1119, or as provided in Rule 225."

A hearing into the matter was held on February 12, 1981. Claimant was found guilty and assessed a five-day suspension. The transcript of that hearing has been made a part of the record of this case. A review of the transcript reveals that Claimant received a full and fair hearing and that, by his own admission, he did have a jack under the track in violation of Rule 1119. This Board, however, thinks that a loss of five days' pay is far more severe a penalty than is required to make Carrier's point in this case.

Claimant is fully aware of the Rules and was persuaded that since he had only one jack under the rail and since he could see for miles in both directions, he could quickly pull the jack from under the rail with no obstruction to train traffic. While **this** Board does not condone even technical violations of safety rules, we must conclude that a letter of reprimand would have been a more appropriate penalty based on the total record of this case.

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

The discipline was excessive.

A W A R D

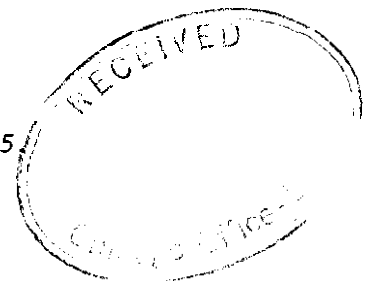
Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of February 1985



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CARRIER MEMBERS' DISSENT
TO
AWARD 25273, DOCKET NO. M-24782
(Referee Dennis)

We feel the Majority was in error in reducing the mild discipline in this case. The Division found a violation of Rule 1119 based on Claimant's own admission. This, coupled with a record of previous offenses, clearly supported the five day suspension assessed. Claimant, es a **foreman**, knew or should have **known**, the risks involved in his action.

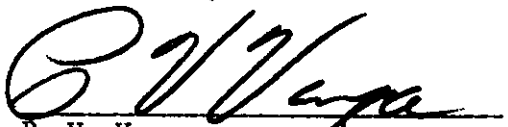
Safety rules of this nature directly related to train movement are designed to protect **train** crews, track forces and the general public. This decision sends an unfortunate signal to the **majority** of those making a genuine effort to comply with a safety program **and** to those responsible for its enforcement.

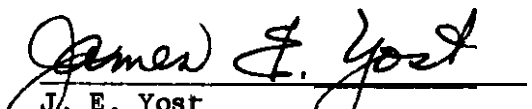
We dissent.


T. F. Strunck


W. F. Euker


M. W. Fingerhut


P. V. Varga


J. E. Yost