

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25352  
Docket Number MW-25358

Edward L. Suntrup, Referee

(**Brotherhood** of Maintenance of Way **Employees**)  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (**Amtrak**))

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

(1) The discipline of J. A. **Benthall** ("One year temporary disqualification as Track Foreman and Assistant Track Foreman") for alleged violation of "Rule 910" and "Rule 213.120" on August 18 and 19, 1981 was without just and sufficient cause and on the basis of unproven charges (System Docket **334D**).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant was notified on August 27, 1981, by the Carrier to attend a trial on October 19, 1981, to determine his responsibility, if any, with respect to his alleged violation of Rule 910 of the Carrier's Operating Rules and Instructions, **and Specifications** under Rule 213.120 of M.W.-1000. After postponements the trial was held on November **23**, 1981, after which the Claimant was notified that he had been found guilty as charged and that he was being disqualified as Track Foreman for one (1) year.

The Claimant was specifically charged with failing to comply with the Rules and Specifications at bar when he supervised Surfacing Unit Z-142 on Carrier's number 3 and 4 tracks at Lincoln Interlocking on August **18-19**, 1981, which resulted in track conditions which were unsafe for the passage of trains. A review of the record shows that two (2) Carrier witnesses, the **General** Foreman and the Track Supervisor, both testified that **an** unsafe condition was created at the locale in question after the Claimant's crew had finished **work** there. The track **work** which had been done on track number 3 had adversely **affected** track **number** 4. When track number 3 was raised some four (4) to six (6) inches in the long timbers area and track number 4 was not also raised at the same time the cross level of the latter track was affected and the unsafe condition resulted.

As moving party in the instant case the burden of proof is on the Carrier to show by means of substantial evidence that the Claimant is guilty as charged (Third Division Awards 18863, 19670). Substantial evidence has been defined **as** such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (**Consol.** Ed. Co. vs. Labor Board 305 **U.S.** 197, **229**). An analysis of the record shows that the Carrier has met that burden of proof. Since the Claimant was qualified on Rule M.W.-1000 there is also no showing here that the actions of the Carrier, when it levied the discipline which it did, **were** capricious or arbitrary. On merits the instant claim cannot be sustained.

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

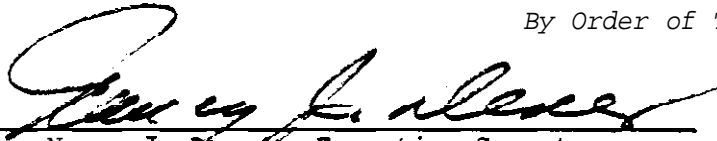
That the Agreement **was** not violated.

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 15th day of March 1985