NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25549
Docket Number NW-24923

George V. Boyle, Referee

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

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

(1) The five (5) days of suspension imposed upon Track Inspector Foreman A. Mancini for alleged failure 'to properly comply with instructions from your supervisor on July 7, 1981" was without just and sufficient cause and on the basis of unproven charges (System Docket 257D).

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

OPINION OF BOARD: On July 7, 1981, the Claimant was instructed by his Supervisor to inspect Track No. 5 between Mile Posts 9 and 11 of the Carrier line which had been the site of a derailment. His Foreman stated that he was to determine if there were defects which would make the track unfit for service or alternatively to determine if, and under what conditions, the track might be returned to service.

The Claimant asserts that this order was given, not on July 7 but on July 3, 1981, and that he reported various discrepancies in the condition of the track. But regardless of that assertion, his track chart dated July 7, 1981, notes various defects.

He testified that he approved the track for service, 'to run trains at two miles per hour."

The Foreman indicated that the Claimant was to notify the operator to this effect.

On July 8, 1981, a derailment occurred at mile 10.5 on Track No. 5, as a result of, "Rock-off due to irregular cross level, 3 3/8" in 62 feet.'

The Claimant declares that he was under pressure from the Track Supervisor to put the track back in service and did so on July 3. Further, he argues that the train undergoing derailment must have been traveling in excess of two miles per hour. The Claimant's ultimate position is that he did properly inspect the track, reported its condition in prescribed form to the proper authority and thus is improperly disciplined for an infraction of which he is innocent. And, arguendo, if guilty of poor judgment the severe penalty is unwarranted.

The Carrier, through testimony of its Supervisor and the written record, argues that the Claimant was qualified to make the inspection and did so under proper instruction. But he failed to complete his duties of insuring that the track was in fit condition to be used, did not report the proper condition to his superior and, most damaging of all, was derelict in failing to notify the block operator or note in his report the speed restriction on the track that he had determined.

While there is contradictory testimony from the Claimant and the Supervisor, it is not for the Board to settle such matters as numerous Awards have confirmed. And thus the Board is left with the conclusion that the Claimant, in fact, was instructed to inspect the track on July 7. **Moreover,** his own testimony confirms this. And, regardless of overt or covert pressures to return the track to service. it is his obligation to fulfill his duties of making a proper determination of the track's fitness for service. Further it was surely his duty to notify the block operator of the speed restriction which it is uncontested he failed to do.

Based upon this dereliction, the Board has scant reason to disturb the penalty of five (5) days suspension and will not do so.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, a.5 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 26th day of July 1985.