

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25659
Docket Number NW-25823

Hyman Cohen, 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 thirty (30) calendar days of suspension imposed upon **Trackman** M. Garrett for alleged violation of "Rule 4138", "Rule 4140", "Rule 4141(c)" and "Rule 4143" was without just and sufficient cause and on the basis of unproven charges (System Docket NEC-BMWE-SD-523D).

(2) The charges leveled against the claimant shall be removed from his record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant is employed by the Carrier as a **Trackman** at its Harrisburg, Pennsylvania facility. He had over three (3) years of service with the Carrier. Following a trial that was held on October 25, 1982, the Claimant was assessed a thirty (30) day suspension for dereliction of his duties as a gang watchman on September 26, 1982.

The Claimant was one of three watchmen assigned to watch for, and warn the gang of approaching trains. His particular assignment was to serve as the middle watchman in the immediate vicinity of the work area and the other two (2) watchmen were stationed at each end of an appropriate distance from the immediate work area. The Claimant's duties consisted of watching for trains, the approach of which would be signaled to him by either of the two (2) other watchmen. Foreman Lightly specifically instructed the Claimant to position himself in the center of the track immediately adjacent to the approximate center of the area of track where track machines were operating. The nearest machine to the Claimant was a tamping machine. At approximately 10:00 a.m. on September 26, the Claimant was almost struck by a train and did not warn members of the gang of the oncoming train.

The noise from the tamping machine may have hampered the Claimant's ability to hear the whistle of the approaching train. However, his position close to the tamping machine does not exonerate the Claimant from the proper performance of his duties as a watchman. The inherent nature of railroad operations occasionally makes it necessary for employees to work under conditions which cause the Carrier to establish safety rules for the purpose of protecting its employees. The need to strictly comply with the Carrier's safety rules is critical in situations where an **employee** is faced with conditions which may be less than ideal. Although the Claimant was positioned near a tamping machine, it was imperative that he strictly comply with the applicable safety rules. The facts in this case disclose that he failed to do so on September 26, 1982. Before the approaching train was upon him, the

Claimant said that he was "squatting down • **". That I cannot deny because I **was**". He added the following: "I was just stretching my legs because **you** get tired of standing up all day. The next thing I know, I turned around and the other flagman was waving me off the track. I cleared the track, seconds before the train came by." Furthermore, the Claimant said that he 'could not see the train until it came around the curve.' He was 'about six to eight **catpoles**' from the curve; yet he did not see the train until it was "about" one (1) **catpole** away from him. The Claimant indicated that at the time, he 'was looking in one direction and • ** didn't see a train ***.'" He then turned and saw the flagman.

Based upon the record, the Board infers that the Claimant did not exercise sufficient vigilance in the performance of his duties. He failed to keep alert at all times to watch out for approaching trains in both directions.

Under the circumstances disclosed by the record, the Board is compelled to conclude that the Claimant failed to exercise the degree of care required in the performance of his duties. In light of the serious nature of the offense committed by the Claimant, coupled with the fact that safety has the highest priority in the work place, the Board is of the view that the penalty imposed by the Carrier should not be disturbed.

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. Weaver - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.