

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26105
Docket Number MW-26007

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The discipline ('Time held out of service to apply. Disqualified as Patrol Foreman') imposed upon Mr. S. Gober for alleged 'Failure to report or take corrective action on track defects on the single main track at Allen Interlocking' was without just and proper cause and in violation of the agreement (System Docket CR-174-D).

(2) Mr. S. Gober's seniority as a patrol foreman shall be restored and unimpaired, his record cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: By Notice dated February 2, 1983, Claimant S. Gober was notified by Carrier to attend a Formal Investigation on February 10, 1983, to determine his possible responsibility for "failure to report or take corrective action on track defects." Carrier maintains that this alleged failure by Claimant at Allen Interlocking "lead to the derailment of MERC-2 on January 26, 1983." Following the Investigation the Claimant was notified that he had been found guilty as charged.

A review of the case at bar must first direct the Board's attention toward procedural issues. With regard to the procedural issues raised on the property, by the Organization, this Board has carefully reviewed each issue and finds that they are not supported by the record.

With regard to the merits, the Claimant testified in the Investigation that he had not found track conditions that could have led to a derailment in his area of responsibility or any track conditions to exceed F.R.A. limits. Yet two Carrier witnesses testified that defective ties were the cause of the derailment which occurred in Claimant's area of responsibility. Mr. Miller stated that his Investigation of the derailment showed six "defective ties that would not probably hold gauge or surface" and that "these cars derailed due to wide gauge." Mr. Shebby concurred. The record substantiates that it was the Claimant's responsibility to list and take corrective action within this territory. The Carrier has provided substantial probative evidence that Claimant was derelict in his duties as Track Patrol Foreman. As to

the differences in testimony on the validity of track conditions, by long established precedent, Carrier's judgement in the credibility of witnesses and determination of fact will not be challenged by this Board (See Third Division Awards 10113, 21612). Carrier has shown by probative evidence that the Claimant is guilty as charged and thereby met its burden of proof.

The only question left for this Board to determine is whether the assessed discipline was reasonable. This Board does not find evidence of arbitrary, capricious or excessive discipline and will therefore not disturb the Carrier's judgement in 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

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. Dover - Executive Secretary

Dated at Chicago, Illinois this 22nd day of August 1986.

