

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26192
Docket Number MW-26098

Edward L. Suntrup, Referee

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

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

1. The disciplinary disqualification of Foreman C. W. Hull as Tie Gang Foreman for alleged violation of 'Rule 3001A' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-230-D/MW-3-27).

2. The charge leveled against Mr. C. W. Hull shall be removed from his record and he shall be listed as qualified for the position of Tie Gang Foreman."

OPINION OF BOARD: The Claimant was charged with violation of Safety Rule 3001A. He was specifically charged with responsibility for the derailment and damage to 1 Plateboy and the derailment of 3 Push trucks on March 16, 1983 at approximately 3:50 P.M. at JW Switch, Conemaugh, Pennsylvania. At the time the Claimant held the position of Tie Gang Foreman. After a Hearing was held on April 4, 1983, the Claimant was advised that he had been found guilty as charged and he was disqualified as Tie Gang Foreman.

The record shows that the Claimant and an Acting Foreman were assigned to a Tie Gang working in the area of the JW Switch on the day in question. According to testimony at the Hearing the Claimant was Senior or Lead Foreman. The Racine Plateboy and 3 Push trucks derailed at the point cited above when they were being moved because clamps on the plateboy hit the heel block at the switch. This was caused by the loss of a safety pin in the plateboy. The Assistant Production Foreman to whom the Tie Gang was assigned on March 16, 1983 stated the following at the Hearing with respect to the responsibilities of the Lead Foreman:

"It is the sole responsibility of the lead foreman to see that all machinery is safe. No machine leaves a work site unless it is inspected. It has always been the procedure in the tie gang or the raising gang . . . it is the lead foreman's job to make sure - - - whether he does it or assigns somebody else to do it - - - to inspect the machinery before movement is made. When we move the lead foreman takes his back-up foreman and they work both sides of the machine from front to back to make sure everything is secure for movement . . . that is standard procedure before moving equipment."

It appears from testimony by the Claimant at the Hearing, that he did not have a proper understanding of his responsibilities relative to the safe operation of the equipment used by the Tie Gang. He testified that he thought "... the operators (were) responsible . . . to check to see if the equipment (was) safe to move." This apparently was why he did not assign either the Repairman or the Second Foreman in charge to have the equipment checked. Part of this confusion with respect to his responsibilities may have been because the Claimant had just started on the position of Foreman on the day the accident occurred. It was further testified by the Claimant that it was his understanding that he was in charge of only the "front end of the tie gang" which included some 7 pieces of equipment, but not the Racine Plateboy. He also testified that although he had held the Foreman position at various times in the past he had no familiarity specifically with the Racine Plateboy. Further, the Claimant had not made inquiries on the day of March 16, 1983, of those under his charge to ascertain if all were qualified to operate the various pieces of equipment. As it turned out one of the employees assigned to operate the Plateboy was not qualified to do so.

A complete review of the record shows, therefore, that although the Claimant stated in Hearing that he was familiar with Rule 3001A he did not, apparently, fully realize that he was personally responsible, as Lead Foreman, for the safety of all of the equipment under his charge on March 16, 1983. The Claimant must bear responsibility for the derailment and damage to the Plateboy and the Push trucks on that date because Safety Rule 3001A clearly states:

"Immediate supervisor shall be responsible for the safety instruction and safe performance of all men under his jurisdiction including employees from another department or gang."

On the other hand, the Claimant's negligence must be put in the context of some extenuating circumstances which were present when the derailment took place. This includes his lack of familiarity with the specific equipment in question, which would no doubt have been rectified as the Claimant gained tenure in the Foreman's position from March 16, 1983 onward. Also, the Claimant testified at the Hearing, which was not disputed, that he had not received specific instructions with respect to his Foreman's duties on this gang from any of the Production Supervisors prior to assuming these duties on March 16, 1983. The Carrier's Officers must, therefore, also assume some of the blame for the Claimant's failure to have carried out all of his duties according to "standard procedure."

On the record as a whole, therefore, it is the decision of the Board that the Claimant has already sufficiently paid the price for his negligence on March 16, 1983. The Claimant shall, therefore, be returned to the list of employees qualified for the position of Tie Gang Foreman.

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 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 24th day of November 1986.