

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26218
Docket Number MW-26268

John E. Cloney, Referee

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

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

1. The disciplinary ~~demotion~~ of Track Foreman M. R. Thomas, his disqualification as foreman and the fifteen (15) working days of suspension imposed upon him for alleged violation of NRPC Operating Rule '910' was unreasonable, unwarranted and on the basis of unproven charges (System File NEC-BMWE-SD-695D).

2. Mr. M. R. Thomas' seniority as track foreman shall be restored and unimpaired, his record shall be cleared of the charge leveled against him, he shall be compensated for all wage loss suffered and he shall be allowed the difference between what he would have received at the track foreman's rate and what he was paid in a lower rated position until he is returned to work as a track foreman with seniority as such unimpaired."

OPINION OF BOARD: On August 3, 1983, Claimant Thomas reported for work as a Track Foreman. He was not told there was a Section of rail missing in an area where rail work was underway. At the subsequent Hearing it was established certain other Carrier Supervisors were aware a Section was out of service. While walking through a tunnel on his rounds Claimant saw a track car approaching and at the same time heard a Flagman's horn indicating an approaching train. He held up his hand and the track car stopped. After the train passed he allowed the track car (an 07 Tamper) to continue moving in a northerly direction. After traveling a distance the Tamper derailed because of the missing Section. A Burro Crane being used in the rail work had been left at the north end of the area of the missing rail but no barricade had been erected at the south end as is required by Carriers' Rules.

On August 8, 1983, Claimant was notified of a trial to be held on August 23 in connection with his alleged violation of Rule 910 which states in part:

"Foreman - Track are responsible for the safe condition of track . . . in their charge . . . Whenever track does not conform to these standards, they will immediately take appropriate protective or corrective action . . . Foremen - Track are responsible for safety instruction and safe performance of all employees under their jurisdiction. They are responsible for the care and proper use of tools, material and equipment . . ."

The Notice of Trial specification read:

"In that on August 3, 1983 at approximately 4:45 P.M. in the **Gilmore** Tunnel, you stopped 1306 track car on your out of service track and then signaled to 1306 to proceed north into an unsafe track condition resulting in the derailment of said track car."

At the Hearing no one testified Claimant had been informed of the missing rail although at least **two** of Carrier's Supervising staff on duty were aware of it. **However**, Project **Engineer Coleman** who left the property at 3:00 P.M. stated he received a call at his **home from** Claimant a little after 6:00 P.M. **They** discussed what had happened and "I asked him if he saw they had rail out, he informed me that he did." Claimant denied saying this. He testified he told Coleman in this conversation that he had been in the company of an MCI Field Engineer. Recalled, Coleman answered "I can't recall" when asked if Claimant mentioned the MCI Engineer to him when they spoke.

Burro Crane **Foreman Lockwood** described the location of the derailment as the Wilson Tunnel.

On September 6, 1983, Claimant was notified of discipline of "Fifteen (15) working days suspension; disqualification as a foreman." Appeals followed. On March 21, 1984, Assistant Vice President Labor Relations **Weaver** wrote:

". . . we are agreeable, strictly on a leniency basis to removing the disqualification as a foreman. **The Appellant** may exercise his foreman seniority by making bid for any foreman position for which he may be qualified . . . in all other regards, the appeal is denied."

The Organization contends the charge was not sufficiently specific in that it describes the **Gilmore** Tunnel rather than the Wilson Tunnel as the site of the derailment. It also contends others were at fault in not notifying Claimant of the derailment. It considers **Coleman's** testimony as having been impeached by his inability to recall whether the **MCI** Engineer had been discussed in the phone conversation and therefore argues his testimony regarding the entire conversation is unreliable. It notes there is nothing in the record to suggest Claimant accepted Carrier's offer of leniency.

This Board does not agree Coleman's inability to recall whether an MCI Engineer was mentioned in his conversation with Claimant impeaches his testimony. In taking the position it **does** the Organization relies upon cases holding that where a witness has testified falsely regarding one matter, his testimony regarding other matters is not probative. **This Board** fully endorses that principle - but it is not applicable here. There is no basis to conclude Coleman testified falsely regarding the MCI Engineer when he stated he didn't recall that being mentioned.

This Board has consistently held we are not in a position to resolve factual conflicts or determine the credibility of witnesses. **Thus** we conclude there was evidence adduced at the Hearing upon which Carrier could rely in determining Claimant violated Rule 910. It may be the evidence established others were also at fault but that does not exonerate Claimant.

It is this Board's understanding from the letter of March 21, 1984, that Claimant's disqualification has been removed and his seniority is unimpaired. Accordingly, we shall deny the Claim.

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

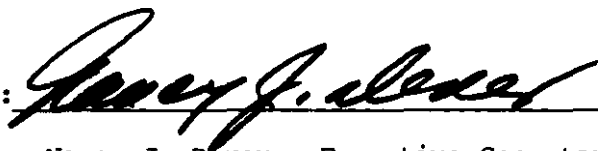
That the Agreement was not violated.

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 January 1987.