

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26304
Docket Number **MW-26176**

Gil Vernon. Referee

(Brotherhood of Maintenance of **Way** Employees
PARTIES TO DISPUTE: (Southern Pacific **Transportation** Company (Eastern Lines)

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

1. The nineteen (19) (sic) days of suspension Imposed upon Track Foreman R. P. Boney for alleged 'Violation of Rule H202 of the Rules and Regulations for Maintenance of Way and Structures' was arbitrary, capricious, without just and sufficient **cause** and on the basis of unproven charges (System File MU-84-21406-68-A).

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 September 15, 1983, the Carrier directed the following letter to the Claimant:

"Dear Sir:

On September 12, 1983 at approximately **10:30** AM while performing track maintenance in the Baldwin Siding you provided improper flagging protection which is in violation of Rule N202 of the Rules and Regulations for Maintenance of Way and Structures of the Southern Pacific Transportation Company, effective November 1, 1976 which reads in part as follows:

'Rule M202. When track, other than main track, is obstructed or impassable, or before obstructing or any way rendering **track impass-**able, switches leading to such track must be spiked and locked **with MofW** Department lock
. . . . '

For your violation of Rule M202 you are suspended from the service of Southern Pacific Transportation Company for nine (9) working days without pay effective September 13, 1983 through and including September 23, 1983.

Please arrange to report for duty with your assigned gang at the designated time and place on September 26, 1983."

Subsequently, the Claimant requested a Hearing which was held on October 18, 1983. The Carrier advised the Claimant on October 19 that the initial decision would stand as issued.

The basic defense presented by the Organization is that given the circumstances present, the Claimant had, on the day in question, complied with Rule 10G of the Rules and Regulations for the Maintenance of Way and Structures. Rule 10G states:

"10-G. When an UNATTENDED red flag or red light is displayed to the right of main track or siding in direction of approach, train, after stopping, must be preceded for a distance of three-fourths mile from the point where flag or light is displayed, by a flagman who must carefully examine track and structures.

An UNATTENDED red flag or red light placed between the rails of any track other than main track requires that train or engine stop and **not** proceed until flag or light has been removed by an **employee** of the class that placed it there.

When an ATTENDED red flag or red light is displayed to the right of main track or siding in direction of approach, train, after stopping, may proceed without being preceded by a flagman but will be governed by instruction in **MofW** FLAGMAN'S ORDER, Form CS-5526, which must be read by engineer then returned to flagman."

Further in this connection, it argues that Rule 10G does indeed apply and that the Claimant and all other employees in the vicinity had never been told Rule 10G did not apply in such situations.

It is the Board's opinion that the Carrier established a prima facie case that the Claimant failed to comply with Rule M202. Reasonably read, Rule 10G is not specific to the situation as it existed on the Claimant's gang on the day in question; it more reasonably pertains to those employees operating trains **or** in the case of Maintenance of Way **Employees** to those operating track equipment.

Rule M202 is clearly more specific to this situation. The Claimant has a responsibility to be conversant with all Rules and to properly apply them. While he may have operated under Rule 10G in the past, there is no convincing evidence that the Carrier actively or knowingly condoned his procedures.

In view of the foregoing, the Claim must be denied.

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

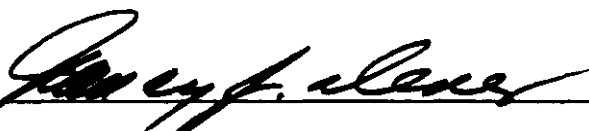
That the Agreement was not violated.

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 24th day of April 1987.