

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26529

Docket Number MW-26764

Edwin H. Benn, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Missouri-Kansas-Texas Railroad Company

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

1. The fourteen (14) days of suspension and the thirty (30) days deferred suspension imposed upon Machine Operator G. M. Marcum for alleged violation of Rules '91', '98' and '100' was without just and sufficient cause (System File 600-12).

2. The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a Machine Operator holding a seniority date of February, 1974, was assessed suspensions of 14 days (actual) and 30 days (deferred) after Hearing and by letter dated August 29, 1984, for failing to properly perform repairs on certain track sections. The disciplinary action involved in this case arises out of the same incidents occurring on or about August 2, 1984, discussed in Third Division Award 26530.

The record demonstrates that Claimant was assigned to certain duties including the operation of torsion beam tamper that if performed correctly would not have resulted in the track section being in substandard condition with **unspiked** ties and unsupported rail after the repairs were made. Substantial evidence can therefore be found in the record to support the Carrier's decision to impose **discipline**.

However, although we believe discipline was appropriate due to Claimant's responsibility for the disrepair of the track section, we are of the opinion that the amount of discipline imposed was harsh. We shall therefore reduce the actual suspension from 14 days to 7 days and shall require that Claimant be compensated accordingly.

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;

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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:

  
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Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.