

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26667

Docket Number MW-26660

Dana E. Eischen, Referee

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

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

(1) The discipline (three days of suspension and disqualification as track foreman and assistant track foreman for one year) for alleged violation of Construction and Maintenance Practice (MW-1000). Paragraph 213.6(a) and Paragraph 213.9(b) on February 25, 1984 was without just and sufficient cause (System File NEC-BMWE-SD-894D).

(2) Mr. T. T. Oates' seniority as track foreman and assistant track foreman shall be restored and unimpaired, his record shall be cleared of the charges leveled against him, he shall be compensated for all wage loss suffered during his suspension and he shall be allowed the difference between what he would have received as track foreman and what he was paid during his disqualification period."

OPINION OF BOARD: The Claimant became an Amtrak employee in 1976 and was working position of Surfacing Foreman on February 25, 1984. In that position, Claimant shared supervisory responsibility for Gang Z-032 with another Surfacing Foreman, H. Smothers.

On the night of February 24, 1984, Foreman Smothers supervised a portion of the Gang assigned to resurfacing work on Track No. 2 between Edgewood and Bush, M.P. 72.5 and 73.8. On that evening, Claimant worked with another portion of the Gang, hauling ballast. Foreman Smothers took the track out of service and placed a 30 mph speed restriction between M.P. 72.5 and 73.8, territory which otherwise was subject to Class 6 operation, i.e., 110 mph.

During his tour of duty on the track resurfacing job, Foreman Smothers completed only a small section between 72.5 and 72.6, due to malfunction of the tamper. Claimant took over the rest of that job on the night of February 25, 1984. According to Claimant's testimony, he inspected the completed work from 72.5 through 72.6 and, in his judgment, found it appropriate for Class 6 operation. Inexplicably, however, Claimant removed the speed restriction from the entire course, Edgewood to Bush, M.P. 72.5 to 73.8, including the portion not yet resurfaced. He did this at approximately 4:00 A.M. on February 25, 1984.

Later that morning, Track Inspectors assigned to officially review the work in question found that the speed restriction had already been lifted by Claimant. Also the Track Inspectors determined that the portion between 72.5 and 73.8 was not fit for Class 6 operation.

After ascertaining that Claimant had lifted the 30 mph speed restriction under the circumstances described, restoring the track to 110 mph operations, Carrier served him with the following Notice of Investigation:

"VIOLATION OF CONSTRUCTION AND MAINTENANCE PRACTICE (MW 1000) Par. 213.6 Protection in part: a) Protection shall be provided for any track that is considered not satisfactory for the passage of trains at the maximum speed permitted, including placing an appropriate temporary speed restriction and notification of the block station and/or train dispatcher.

VIOLATION OF CONSTRUCTION AND MAINTENANCE PRACTICE (MW 1000) Par. 213.9 Classes of Track: Operating speed limits (in part b) If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part.

SPECIFICATION: In that on February 25, 1984 at approximately 3:58 AM you failed to provide proper protection for the track when you removed the 30 mph speed restriction on #2 track at MP 73.8-72.5 and returned it to the maximum authorized speed of 110 mph (class 6). Subsequent inspection by other supervision indicated the track condition of that area to only meet criteria for a maximum speed of 80 mph (class 4)."

Following the Investigation, Carrier concluded that Claimant was guilty as charged and assessed penalty of three days suspension without pay and disqualification as Supervisor for one year.

The record amply demonstrates that Claimant removed a speed restriction placed for the protection of track upon which maintenance crews were working. He removed this restriction without personally making sure that the work had been completed. In fact, the record indicates that Claimant knew, or should have known, that the job was only partially done when he removed the restriction for the entire section which had been placed under protection. As an experienced Maintenance of Way Foreman Claimant is fully responsible for his failure to follow safety requirements and cannot shift the blame to his fellow Foreman who placed the protection in the first place.

Based upon the foregoing we find no basis for disturbing Carrier's determination of Claimant's guilt. Nor can we find the penalty imposed so unusually harsh or disproportionate to the offense as to warrant modification.

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

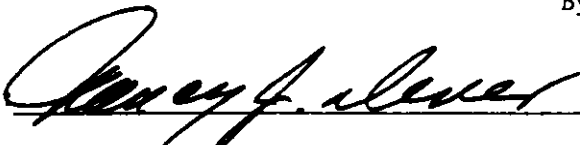
That the Agreement was not violated.

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 23rd day of November 1987.