

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The discipline assessed Extra Gang Laborer **D. V. Millsaps (forty-five demerits)** was without just and sufficient cause, arbitrary, unreasonable and in violation of the Agreement (System **File** D-60/013-210-M).

(2) The claimant's record shall be cleared of the demerits referred to in Part **(1)** hereof and in all other respects."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On October 10, 1985, the Carrier filed charges against the Claimant, which read as follows:

"Report to the Office of Division Engineer, Room **200**, Freight Office Building, 5500 Ferguson Drive, Los Angeles, California, at 8:00 a.m., Tuesday, October 22, 1985, for formal investigation and hearing to develop facts and determine your responsibility concerning charges that you failed to promptly report on-duty personal injury to proper authority on prescribed form which allegedly occurred at approximately 11:00 a.m., August 31, 1985, while employed as Extra Gang Laborer on Extra Gang 5902, and concerning charges that you have displayed unwillingness or inability to exercise care to prevent injury to yourself after having experienced eight (8) personal injuries between August 12, 1981 and **1985**,

indicating violation of General Notice, General Rules A, B, D, E and I, and Rules **607(1), 607(2)** and 621, and Safety Instructions 4000, 4001, and 4004 of Form 7908, 'Safety, Radio and General Rules for All Employees,' **4/85.**

The investigation and hearing will be held in conformity with Rule 48 of the agreement between the Union Pacific Railroad Company and the Brotherhood of Maintenance of Way Employees effective January 1, 1973, revised October 1, 1978, and amended April 1, 1981, and you are entitled to representation as provided for in that rule.

You may produce such witnesses in your defense as you may desire at your own expense."

At the investigation of the charges, held on November 5, 1985, the Claimant was present and represented by the Organization. The investigation was conducted in a fair and impartial manner.

Following the investigation, the Carrier found Claimant culpable of the charges. Based upon those findings, the Carrier imposed the discipline of 45 demerits.

Upon due consideration of all the evidence in the record, we find the evidence sufficient to support the Carrier's charge; however, we find the discipline assessed to be excessive. The 45 demerits shall be reduced to 15 demerits.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deber - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.