

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Detroit, Toledo and Ironton Railroad Company

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

(1) The twenty-four (24) days of suspension imposed upon Mr. E. A. Young and his disqualification as track patrolman for alleged responsibility for an improperly lined main line switch for the passing track at Mile Post 75.65, Flat Rock Subdivision, causing 'train Extra 5861 North' to go into the passing track on March 16, 1984 was without just and sufficient cause and on the basis of unproven charges (System File 53-64/Carrier's File 8365-1-177).

(2) The claimant shall be reinstated as a track patrolman with seniority as such unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

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 March 19, 1984, the Claimant received the following notification:

"On March 16, 1984 at 1315 hours, train extra 5861 north found main line switch at south end of Delta passing track mile post 75.65 improperly lined for the passing track causing said train to go into the siding.

This is to confirm verbal notification to you on March 16, 1984 at 1545 hours that you are placed out of service as a track patrolman for this carrier, however, you may exercise your seniority as a trackman in accordance with your working agreement.

You will remain out of service as a track patrolman until that time when it is determined what your responsibility is, if any, in the above incident."

On March 21, 1984, the Claimant was notified that he was the subject of an investigative hearing under the following charge:

"To determine your responsibility, if any, as a Track Patrolman, for a main line switch at mile post 75.65 Flat Rock subdivision found improperly lined for the passing track causing train Extra 5861 north to go into said passing track on Friday, March 16, 1984 at 1315 hours."

On April 19, 1984, the Claimant was advised that he had been found guilty of the charge and was disqualified as a Track Patrolman. He was also advised that he was disciplined to "24 days without pay as a Track Patrolman as discipline (time already served)."

During the period commencing March 17, 1984, the Claimant exercised his seniority and performed service as a Truck Driver. (There is some confusion in the Carrier's Submission as to the dates the Claimant served as Truck Driver. Whether he did so throughout the period from March 17 to April 19, it is nevertheless clear that he was withheld from service as a Track Patrolman.)

The hearing record supports the Carrier's conclusion that the Claimant had been at fault in improperly lining the switch, causing a train to leave the main line and enter the siding. Testimony was to the effect that the Claimant's keys had been found at the switch. The Claimant himself testified, "I swore I locked the switch. But I don't remember if I locked it or dropped my key. I don't remember."

There was a procedural question raised by the Organization in reference to a key receipt offered in the record, to which the Hearing Officer sustained an objection in that it was not signed by the Claimant, but which nevertheless remained in the hearing record. The Board finds this of little significance, since the Claimant admitted that the keys recovered at the switch were his.

The Board finds that the resulting penalty of disqualification as Track Patrolman and confirmation of retroactive suspension as Track Patrolman for the previous 24 days to be entirely reasonable.

There is, however, a further question raised by the Organization as to the Claimant's pre-hearing suspension from the position of Track Patrolman prior to a hearing. The Organization argues this is in violation of Rule 34(a), which reads as follows:

"RULE 34 - DISCIPLINE

(a) Employees will not be suspended or dismissed from the service without a fair and impartial trial; neither will they be held off duty for minor offenses pending investigation or decision. Employees will be notified in writing ten (10) days prior to date suspension takes effect except when held off duty because of a major offense."

This Rule clearly permits the Carrier to hold employees off duty for other than "minor offenses," pending investigation and hearing. In this instance, the Claimant's action could well have had serious consequences as a result of a train being misdirected to a siding. The Board does not dispute the Carrier's conclusion that this was more than a "minor" offense. Further, the Claimant was not kept from all service but simply from that of Track Patrolman, pending the hearing. Final judgment as to the Claimant's responsibility was not made until the conclusion of the investigative hearing. The interim suspension from duties as Track Patrolman was not in violation of Rule 34(a).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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