

The Third Division consisted of the regular members and in addition Referee Stanley E. Kravit when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Missouri-Kansas-Texas Railroad Company

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

(1) The sixty (60) calendar days' actual suspension imposed upon Machine Operator L. F. Mills for alleged violation of the Carrier's operating rules on February 25, 1987 while working in the vicinity of Taylor, Texas was arbitrary, capricious and in violation of the Agreement (System File 200-171/2579).

(2) Mr. L. F. Mills' record shall be cleared of the charges 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 employees involved in this dispute are respectively carrier and employees 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 February 25, 1987, Claimant was working as a Ballast Regulator Operator under the supervision of the Assistant Roadmaster. He was instructed by the Assistant Roadmaster to move his equipment after a delayed train had passed by. Claimant assumed from the manner and content of his instruction that only one train had been delayed and that, after that train passed, it was safe to enter the main line track.

In fact, another train was coming and prompt action by the Supervisor was necessary to avoid a collision. No damage occurred. Claimant was subsequently suspended for sixty days for failing to determine from his Supervisor that the track was clear and that it was safe for him to proceed.

At the hearing Claimant's defense was that the Assistant Roadmaster had instructed him to go out on the main line track as soon as possible after

a train delay and that he was justified in assuming that only one train was involved. The transcript reveals a lack of clarity in the Assistant Roadmaster's instructions to Claimant. In response to questions, the Assistant Roadmaster acknowledged that it was his responsibility to be sure that the track was clear.

"Q. Did you tell Mr. Mills that morning when he arrived for work that there was 2 trains coming or that there was a train delay?

A. I told Larry Mills and the tamper operators that we had some trains, let's work on the machines. I never said how many trains.

Q. Before the first train went by, did you come by where Mr. Mills was at and advise him to hurry up and get ready to go out onto the main line?

A. I advised Larry Mills to hurry up and get his machine started.

Q. Did you, that morning, give to the operators present, including Mr. Mills, any type of train sight or something to that effect in writing as to how many trains were coming?

A. No I didn't.

Q. In reference to the last answer on page 9, you advised Mr. Mills to hurry up and get his machine started. Where were the machines going inasmuch as they were waiting for a train to pass?

A. I had superiors in the area and if they had come up at 10 minutes after 7, the first thing they would have said 'why aren't your machines running.' I tell people every day let's fire the machines up whether there are any trains or not."

The first train went by at 7:10 - 7:15 A.M. According to the Assistant Roadmaster, the second train went by at 7:20 - 7:25 A.M. While the Claimant believes the second train went by at 7:45 A.M., the pertinent part of this dispute is the instructions that were given and the circumstances in which they were given. It is the opinion of the Board that both the Claimant and his Supervisor were partly at fault for the near miss. While Claimant should have double checked his instructions, under all the circumstances the instructions could definitely have been clearer.


It is therefore the opinion of the Board that the Supervisor's contribution to the lack of understanding is a mitigating factor and 60 days suspension was too severe. Accordingly, the suspension is reduced to 30 days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1989. .