

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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 thirty (30) days of suspension imposed upon Section Foreman R. Hardwick for alleged violation of General Rule A and Rules 1510, 1511 and 1512 on May 8, 1985 and the thirty (30) days of suspension imposed upon Sectionmen R. L. Green, J. W. Espinosa, B. D. Felton, I. O. Brent and G. P. Polfer for alleged violation of General Notice, General Rules A and B of Form 7908 on May 8, 1985 was unjust, unreasonable and on the basis of unproven charges (System File D-41/013-210-HGEFBP).

(2) The claimants' records shall be cleared of the charges leveled against them and they 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.

The Claimants include the Section Foreman and five Sectionmen. These Claimants were charged with the improper installation of ties which the Carrier contends caused a derailment at Mile Post 374.60 on May 8, 1985. The Claimant Section Foreman was also charged with not being present at the time the tie work was in progress.

The Organization argues the Section Foreman assigned his crew members to install cross ties in accordance with customary practice and further contends he properly instructed his crew members on the methods to be used in performing their assignment. The Organization maintains the Sectionmen Claimants performed their assignments in accordance with the Section Foreman's instructions, and the record demonstrates sufficient basis to conclude the derailment was caused by some defect other than the cross ties installed by the Claimant Sectionmen.

The burden of proof in this dispute rests with the Carrier who must show substantial evidence exists to support its conclusion. The record establishes the Claimant Section Foreman was some five miles away from his section crew when they were installing the ties. The Section Foreman admitted this fact and acknowledged he usually had a qualified foreman supervising his crew when he is called away. This was not the case on May 8, 1985.

The Carrier's Roadmaster testified he examined the derailment site and came to the conclusion the ties had not been properly installed. The Carrier's General Roadmaster examined the derailment area and reached a similar conclusion that the new ties were not properly spiked after installation. Nothing in the record suggests that a factor other than the condition of the track was responsible for the derailment. According to the record, the train was within prescribed speed limits, and there was no evidence of rough handling or defects.

Given the above, the Board finds the record supports the Carrier's determination that Claimant Section Foreman failed to adequately supervise his crew and that the Claimant Sectionmen failed to perform their duties properly. Under these circumstances, we cannot conclude the discipline was excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.