

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28250
Docket No. MW-27819
90-3-87-3-324

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

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

(1) The forty-five (45) demerits imposed upon Section Foreman R. C. Medrud for alleged violation of General Rules A, B, D, 600, 607(2) and 4000 of Form 7908 and Rules 1510 and 1511 of the Maintenance of Way Rules was without just and sufficient cause and in violation of the Agreement (System File D-63/013-210-M).

(2) The claimant's 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 employee 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 were given due notice of hearing thereon.

On December 3, 1985, Claimant accepted an assignment to investigate a derailment which occurred on trackage near the Continental Can Company in East Los Angeles, California. Some confusion existed concerning the location and nature of the track problem, but eventually Claimant reported that he had located the problem and effected repairs. The track was placed back in service but was not used for the next six days. On December 9, 1985, the next train to use the track derailed at the same location as the earlier derailment. On December 10, 1985, Claimant was cited to attend an Investigation on the following charge:

"Report to the Office of Division Engineer, Room 200, Freight Office Building, 5500 Ferguson Drive, Los Angeles, California, at 1:00 PM, Friday, December 27, 1985, for formal investigation and hearing to develop facts and determine your responsibility concerning charges that you failed to comply with instructions from proper authority when you failed to properly investigate derailment which occurred on Track 743 at Continental Can on December 3, 1985, and for your failure to take necessary action to restore track to service resulting in subsequent derailment on December 9, 1985, on Track 743 at Continental Can, while employed as Section Foreman on Gang 5127, in violation of General Rules A, B, D, 600, 607(2) and 4000 of Form 7908, 'Safety, Radio and General Rules for all Employees,' revised April 1985, and also Rules 1510 and 1511 of the Maintenance of Way Rules effective April 28, 1985."

Following the Investigation, Claimant was assessed discipline of 45 demerits and disqualified as a Section Foreman. The demerits assessed placed Claimant's disciplinary record in excess of 90 demerits which resulted in his dismissal. A Claim was processed on a variety of grounds, procedural and substantive, and while under consideration on the property, Claimant was reinstated without prejudice to either parties position.

The transcript of the Hearing does not disclose that Claimant's procedural rights, as established by the Agreement, were violated so as to flaw the Investigation. Moreover, while there is evidence that Claimant was unfamiliar with the location of the derailment, and the instructions that he was receiving by radio may not have been a model of clarity, it was established that he nonetheless notified his supervisor that he had located the problem and effected necessary repairs. It was on his assurances that the track was placed back in service.

Claimant stated that he spent thirty to forty minutes looking for the site of the derailment. The location that he claimed that he made certain track repairs is approximately forty feet from the location of the derailment, however he stated that he did not notice any other track problems.

It is not credible that an experienced track foreman should be excused for failure to notice the aftereffects, and make necessary repairs, of a nearby recent rerailing operation, which took place on trackage he was specifically assigned to check for this specific problem, on the basis that he volunteered for the job, or that he was unfamiliar with the area, or that the information given him concerning the problem was not crystal clear.

Claimant was out of service approximately nine months. While in some situations a suspension of this duration may seem excessive in light of the nature of the offense, when it is considered in the light of Claimant's prior disciplinary record, which has seven entries in five and one-half years of service, it is not inappropriate.


The discipline will not be disturbed.

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 1st day of February 1990.