

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 thirty (30) days' suspension imposed upon Section Foreman L. Henry for allegedly '... being responsible for yard conditions resulting in derailment ... on 7/17/86....' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File D-96/870292G).

(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 waived right of appearance at hearing thereon.

On July 17, 1986, a derailment occurred in Carrier's Las Vegas Yard. It was determined that the accident was caused by excessive track gauge resulting from progressive wear and tear. Claimant, working as a Foreman at the time, was responsible for inspection of the track involved. On July 28, 1986, he was given notice to attend an Investigation on a charge, reading in part:

"AS FOREMAN OF THE LAS VEGAS YARD ON THE 17TH OF JULY, 1986, YOU SHOULD HAVE ENSURED THAT PROPER TRACK STANDARDS WERE COMPLIED WITH TO ENSURE SAFE TRAIN MOVEMENT. AS A RESULT OF INADEQUATE TRACK MAINTENANCE YOU ARE IN VIOLATION OF THE FOLLOWING RULES: GENERAL RULES A, B, 1700, 1725, AND 1860 AS CONTAINED IN MAINTENANCE OF WAY RULE BOOK, EFFECTIVE APRIL 28, 1985."

At the Investigation, two Carrier Supervisors testified as to the cause of the derailment. Also, evidence was introduced that Claimant, as Foreman, was required to have track under his jurisdiction inspected once a week. Claimant admitted that the track in the area of the derailment had not been inspected during the preceding thirty days. His defense for not having done so was that he had too much work, a shortage of employees, and higher priorities. There is, though, no evidence that he ever advised any official of such problems.

It is our view that Carrier has developed, with adequate evidence, that Claimant was guilty of the charges placed against him. Additionally, the transcript of the Hearing does not indicate that Claimant's procedural rights, as established by the Agreement, were breached, so as to require that the discipline assessed be modified. With respect to the level of discipline imposed, thirty days suspension, we do not find it excessive in the circumstances of the nature of the offense when considered along with the totality of Claimant's prior service record.

The discipline assessed 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.