

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28289
Docket No. MW-28070
90-3-87-3-618

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

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

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

(1) The five (5) days suspension imposed upon Trackman/Truck Driver H. P. Morarity, Jr., for alleged negligence, failure to promptly report damages to Truck 535B and alleged violation of Rule 7 on June 6, 1986 was without just and sufficient cause and in violation of the Agreement.

(2) The claim as presented by Vice Chairman J. C. Barber on September 8, 1986 to Chief Engineer J. M. Letro shall be allowed as presented because the claim was not disallowed by Assistant Director Labor Relations R. J. O'Brien (appealed to him on November 11, 1986) in accordance with Sections (a) and (c) of Rule 32 (Carrier's File 8365-1-216).

(3) As a consequence of either or both (1) and/or (2) above, 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 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.

Claimant is a Trackman/Truck Driver who attended a formal Investigation charging him with alleged negligence, failure to promptly report damages to his truck and failure to take the safe course. Following the Investigation held on June 30, 1986, the Carrier found the Claimant guilty and assessed a five (5) days suspension.

The Organization at the Investigation and throughout the handling of the Claim on property, argued that there were procedural errors and that on merits the Claimant was not guilty. The Organization notes that among other issues the same Carrier officer that made the letter of charge was also the Hearing officer. The Organization further notes that the Hearing officer handed the transcript over to the Division Engineer and Chief Engineer who rendered discipline although they were not present during the Investigation. Even further, the next line of appeal was to the Chief Engineer who had already found Claimant guilty. The Organization maintains that these procedural issues violate the Agreement.

The Board has carefully examined the procedural issues and finds no violation of the Agreement Rules herein. We must note that the probative evidence does not indicate that the Chief Engineer rendered discipline along with the Division Engineer, but only that he signed off on a discipline form after the decision had been made by the Division Engineer. Such action did not deny the Claimant an avenue of independent review (Third Division Awards 27610, 26663). A complete review of all procedural issues finds no evidence that the Claimant's rights under this Agreement were violated (Second Division Award 11617, Third Division Awards 27610, 27590, Fourth Division Award 4425, Public Law Board No. 2791, Award No. 18).

On merits, a review of the Rules and the transcript substantiates that the Carrier has sufficient evidence to conclude that Claimant was guilty as charged. Claimant admits that his right rear tire had dropped into a hole on June 6, 1986, and that he moved the boom over the truck cab to extricate himself. The probative evidence substantiates that the Claimant was aware that there were problems with the hydraulic system on the boom, in that it could move without warning. Claimant admits in the record of the Investigation that the boom fell and damaged the truck. The transcript indicates that although Claimant did not observe the damage later reported, he failed to immediately report the damage to the cab of the truck until June 9, 1986. Claimant's failure to promptly report the damage was a self admitted violation of the Rules.


Carrier's findings of guilt in the whole of this case are based upon substantial evidence. This Board finds no basis in the record to disturb the Carrier's action in the instant case.

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 28th day of February 1990.