

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney 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 disqualification as a track foreman and the thirty-eight (38) days of suspension imposed upon Mr. C. C. Bristow for alleged violation of Rules 1725, 1829, 1850, 1862 and 1865 of the Maintenance of Way Rules and Rules A, B, D, 600 and 607 of Form 7908 on January 9, 1986 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File D-62/013-210-B).

(2) Mr. C. C. Bristow's seniority as track foreman shall be restored and unimpaired, his 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.

At the time of this Claim, Claimant worked as a Foreman on the Oxman Section. On January 9, 1986, an evaluation car crew located what it identified as two defects on the track at Mile Post (M.P.) 360.04 to M.P. 360.18 and from M.P. 362.81 to M.P. 363.22. The car crew reported this information to the Roadmaster who testified that he then instructed Claimant to inspect those areas and to make any necessary repairs. Later that day Claimant and his crew performed maintenance work at the curve between M.P. 360.04 and M.P. 360.18. At about 2:15 A.M. on January 11, 1986, Train SHB-09 derailed at the curve near M.P. 360.15.

On February 14, 1986, following an Investigation of the above matter, the Carrier advised Claimant that he had been found in violation of Rules 1725, 1829, 1850, 1862 and 1865 of the Union Pacific System, Maintenance of Way Rules, effective April 28, 1985, and Rules A, B, D, 600 and 607 of Form 7908 Safety, Radio and General Rules for all Employees, effective April 28, 1985.

As a consequence of the Investigation, Claimant was advised that his suspension from service pending Investigation, effective January 11, 1986, and ending February 18, 1986, would stand. Claimant was further informed that the Hearing Officer had determined that Claimant had not used "the judgment or initiative that a Foreman should have used" and, therefore, Claimant would not be allowed to continue in the position of Foreman.

In response to the procedural defects alleged by the Organization, the Board concludes that the Carrier did not improperly remove Claimant from service pending Investigation. Pursuant to Rule 48(o) of the Agreement, the Carrier may suspend an employee pending Investigation where "serious and/or flagrant violations of Company rules or instructions are apparent." The Carrier took such precautionary action herein based on its belief and observation that although Claimant had been instructed to repair track defects, he had failed to adequately do so and within 48 hours of this failure a train derailed at the exact location where the repairs were to have been made. The Board finds that an apparent violation of this magnitude is the kind contemplated by Rule 48(o) and, therefore, the Carrier's action was proper.

The Organization further contends that the Carrier erroneously admitted and used Claimant's personal record at the investigative Hearing and moreover, that the record was incorrect. Testimony indicates, however, that the Claimant's record was correct. Regarding the Carrier's use of the record at the Hearing, a Carrier Officer stated that Claimant's record was introduced to assist the Carrier in determining the appropriate degree of discipline, if discipline was subsequently determined to be warranted. Such use of a personal record in disciplinary proceedings is acceptable practice within the industry. Third Division Awards 23984, 26178.

Finally, the Board finds that the Hearing Officer's involvement with the case prior to the Hearing was minimal. Even more significantly, there is no indication that Claimant was prejudged by the Hearing Officer or that his Agreement due process rights were prejudiced in any other way.

When reviewing the merits of a claim, it is the Board's function to determine if there is sufficient evidence to support the Hearing Officer's decision. The testimony at the Investigation demonstrates that when the Roadmaster gave Claimant instructions to inspect and/or repair the two areas of track, he made it clear that he was concerned both about the possibility of wide gauge and of the possibility that spikes were out because of snow and ice under the rail. He emphasized a particular concern with the vicinity of M.P. 360.10. The record shows that Claimant understood the full import of the

Roadmaster's instructions, irrespective of whether or not the Roadmaster explicitly told Claimant to clear the ice and snow. Instead of taking this precaution, which would have been the reasonable course of action given the fact that the area had already been tagged by the EC-2 car as problematic, Claimant chose to rely solely on his naked vision, even though there was a substantial amount of snow cover to hamper visibility. Under these circumstances, Claimant's actions were careless. The record also suggests that the 45 minutes which Claimant and his crew spent inspecting the track between M.P. 360.04 and M.P. 360.18 did not allow enough time for an adequate inspection.

With respect to the track between M.P. 362.81 and M.P. 363.22, Claimant and his crew failed to inspect this vicinity for several purported reasons, most notable of which was the lack of adequate transportation. However, the evidence shows that at least part of this area was accessible by foot.

Finally, the Roadmaster testified that his inspection of the site shortly after the derailment led him to conclude that since there was packed snow and ice in the holes where the spikes had been that the spikes found next to the ties had been out for awhile.

The Board concludes that the above evidence sufficiently demonstrates that although Claimant had been instructed to do so, he failed to "adequately inspect and/or repair track" in the noted areas.


The last issue before the Board is whether the Carrier acted arbitrarily or unreasonably when it disciplined Claimant both by suspending him and by disqualifying him as Foreman. The Board recognizes no error in the Carrier's action.

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 29th day of March 1990.