

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Missouri-Kansas-Texas Railroad Company

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

(1) The discipline imposed upon Extra Gang Foreman G. E. Taylor for alleged violation of General Rules (D), 607, 609, 815 and 4410 was unjust and capricious on the basis of unproven charges and in violation of the Agreement (System File 300-106/880440).

(2) The Claimant shall have his personnel record cleared of the charges leveled against him and he shall be paid 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.

On January 8, 1988, the Claimant was called to an Investigation into his alleged negligence in his duties when he left a \$1,600 rail saw unattended at Mazie, Oklahoma, on December 30, 1987, that was subsequently stolen, and failing to report the theft to a Supervisor until January 4, 1988. Claimant was found to be in violation of Rules D, 607, 609, 815, and 4410 and was assessed a ten-day actual working day suspension and a ten-day deferred suspension.

This Board has reviewed the entire record of this case, including the transcript of the Investigation held on January 19, 1988, and finds that sufficient evidence was adduced at the Hearing to sustain the first charge. Claimant acknowledged that he had been using the rail saw, that he did not leave it in the care of a member of the gang when he went to lunch, that the saw was unattended for a period of time, and that the saw was missing when he returned.

In regard to the second charge, the record indicates that Claimant knew that there was a question about the saw's whereabouts on December 30, 1987, following his return from the site of a derailment, but that he did not know if members of the crew had taken it with them. Early the next morning, he spoke to the Assistant Roadmaster about it and asked that he look for it in a tool house in Pryor, Oklahoma. Claimant did not hear any more about the saw on December 31, 1987, and did not know for certain that it could not be found until returning to work on Monday, January 4, 1988, after the holiday.


While this Board must conclude that Claimant, by his failure to secure the saw, bears responsibility for its loss on December 30, 1987, we do not find that he was negligent in reporting its absence. The theft of expensive tools is a matter of great concern to Carrier. We do not minimize that fact, but given the failure of Carrier to sustain both charges, we believe that a lesser level of discipline is warranted. Therefore, Claimant's ten-day actual and ten-day deferred suspension shall be reduced to a five-day actual suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.