

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (formerly The Chesapeake
(and Ohio Railway Company)

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

(1) The twenty (20) days of actual suspension imposed upon Track Foreman G. M. Wright for alleged failure to properly protect his work and leave the track safe at the crossover into D Yard, Crandel Road on April 28, 1989 was arbitrary, capricious and on the basis of unproven charges [System File C-D-4651/12(89-527) CON].,

(2) The Claimant shall have his record 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.

Claimant was notified of an Investigation concerning his responsibility, if any, in conjunction with a failure to protect and make safe a specific crossover prior to release of subsequent movements of trains at 1740 hours on April 28, 1989, and resulting in the derailment of three cars on train 691. Subsequent to the Investigation, Claimant was assessed a twenty (20) day actual suspension.

At the Investigation, the Organization requested a more precise and exact charge. Specifically it asked for an explanation of what "properly protect and make safe" meant. The Hearing Officer stated that the "...charge letter is specific within itself...and no further explanation is necessary." The Organization proceeded under protest.

Our view of the charge indicates that it is specific and that it is reasonably calculated to place the employee on notice of the alleged action to be reviewed. It may very well be that in a given case such a charge could be so vague as to hamper the employee in preparation of a defense. As we reviewed this record, however, we can not reach that conclusion. The Claimant was prepared to testify, he had other witnesses present to discuss the events in question, and he had photographs ready to present into evidence.

This dispute presents a classic case of credibility resolution. The Carrier presented witnesses who were specific in their views of the cause of the derailment, even though they may have differed in certain minor areas. The Claimant denied that his actions were the cause of the incident, and he presented witnesses. In such a circumstance, this Board is powerless to disturb the findings of the Hearing Officer who was present and assessed the evidence and testimony, unless his assessment is arbitrary and capricious under the record. We can not draw any such conclusion here.

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 30th day of July 1991.