

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29584
Docket No. MW-30159
93-3-91-3-598

The Third Division consisted of the regular members and in addition Referee Barry E. Simon 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 ninety (90) day suspension imposed upon Track Inspector R. A. Cory for alleged violation of General Rules A and E and Chief Engineers Instruction Bulletin CE-88-002-G was arbitrary, without just and sufficient cause and in violation of the Agreement (System File D-146/900647).

(2) The Claimant's record shall be cleared of the charge 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.

Following a Hearing, Claimant was assessed a 90-day suspension for failing to properly inspect track. At the Hearing, it was established that Claimant inspected the track in the vicinity of Nugget, Wyoming, on June 23, 1990. The following day, there was a twelve car derailment, attributed to a low joint at mile post 55.06. Claimant's inspection did not reveal a defect at that location.

In addition to asserting the Carrier failed to prove its charge against Claimant, the Organization raises several procedural arguments. First, it states Carrier failed to provide the General Chairman with a copy of the Hearing transcript and discipline notice. Rule 48(f) provides as follows:

"A copy of the transcript of the hearing will be promptly furnished the employee charged, his representative(s) and the General Chairman."

This issue was raised by the General Chairman in his letter of appeal, and was answered by Carrier then tendering the documents. Carrier asserts it complied with the Rule by doing so, as there is no time limit specified in the Rule. We do not agree Carrier has no time limit on the delivery of the transcript. The Rule requires it to be furnished "promptly." At the very least, Carrier is obligated to provide the transcript to those responsible for appealing the discipline prior to the expiration of the time limits for making such appeals. This, obviously, is the purpose of the Rule. Although Carrier did not do so, it did offer the General Chairman additional time to file his appeal following his receipt of the transcript. Thus, while we find Carrier in technical violation of the Rule, we do not find this violation prejudicial to Claimant's rights under the Agreement.

The Organization has also objected to the fact that the discipline was rendered by someone other than the Hearing Officer. Furthermore, the official who issued the discipline was also the first official to whom the discipline was appealed. Absent an Agreement provision prohibiting this, we do not find Claimant was denied the due process assured by the Agreement. There is no evidence the discipline decision was based upon anything other than the evidence developed at the Hearing. Additionally, the claim was afforded independent review when it was appealed by the General Chairman.

Finally, we do not agree with the Organization's assertion the Hearing was defective because Claimant was not given a precise notice. The Organization's objection is based upon the fact the notice of charge did not specify the Rules which would be the subject of the Hearing. As we have stated many times, the purpose of the notice is to advise the employee of the scope of the Investigation and to prevent surprise or misleading accusations by the Carrier. It is not necessary, unless explicitly stated in the Agreement, to cite specific Rule violations in the notice of charge. The notice issued to Claimant met the requirements of the Rule.

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With regard to the merits, we find there was substantial evidence to support the Carrier's conclusion that Claimant should have detected the low joint during his inspection the day before the derailment. In view of Claimant's prior record, which includes a 1980 dismissal for a similar offense, we do not find the assessment of a 90-day suspension in this case to be excessive or unreasonable.

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 9th day of March 1993.