

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31846
Docket No. CL-32274
96-3-95-3-93**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Texas Mexican Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11123) that:

- 1. The Company violated the Rules Agreement effective June 1, 1972, as amended, when they arbitrarily suspended Mr. Adan Cavazos, Laredo, Texas, from service for a thirty (30) day period. That the company displayed a complete and utter abuse of discretion; denied him a fair and impartial investigation and rendered excessive and unwarranted discipline.**
- 2. The Company shall be required to reimburse Adan Cavazos for each workday he was withheld from service at the rate of his position. He should also be compensated all overtime he would have worked had he remained an employee of the Company subject to a check of the Company's records. He should be allowed an amount of interest allowable by law, on any monies that have been deprived him on account of the Company's unjust, unreasonable and arbitrary action; and clear his personal record of any mention of this alleged disciplinary incident."**

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 employee 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 were given due notice of hearing thereon.

This is a companion case to Third Division Award 31847. At the time of the incident precipitating this case, Claimant held the position Chief Clerk in Carrier's Yard Office at Corpus Christi, Texas. His seniority date is July 3, 1962. Following the October 31, 1993 derailment, Claimant was notified to appear for an Investigation concerning his "responsibility, if any, in connection with [the derailment]." Following the Investigation, Claimant was assessed a 30 day actual suspension.

The Carrier maintains that Claimant showed poor judgment in relaying important information regarding a damaged track to an inexperienced employee, rather than to a properly designated Carrier Officer. Under the circumstances, the Carrier argues, the discipline assessed was lenient.

The Organization urges that Claimant was unreasonably disciplined in light of his previously unblemished record and 30 years of seniority with the Carrier. Moreover, even if, arguendo, Claimant were deserving of some measure of discipline, the assessment of a 30 day suspension violates Carrier's own discipline policy of "Discipline by Record" established on December 1, 1989.

The Carrier established persuasively that Claimant neglected his duty when he failed to make a sufficient effort to contact a responsible Carrier Officer regarding the track condition. Claimant violated Circular No. 1, dated October 24, 1991, which reminds employees that they must notify one of five listed Carrier Officers in the case of a track condition "which warrants a slow order or other action." In view of the potential for serious damage, and danger to the public, some assessment of discipline is clearly warranted. However, the Organization is correct when it points out that Carrier violated its own published discipline policy. The "Discipline by Record" policy operates on a system of demerits. It specifically provides that "not more than sixty demerits will be assessed for any one violation of the rule or other irregularity." Accordingly, Claimant should have been assessed 60 demerits as of October 31, 1993 -- "the actual date of occurrence." Further, in accordance with the Discipline by Record policy, the demerits thus assigned shall be reduced "at the rate of five credits for [each] three consecutive months of clear record," for the months following October 31, 1993, to the present. Claimant should be compensated for all time lost, if any.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.