

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31847
Docket No. CL-32276
96-3-95-3-114**

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-11124) that:

- 1. The Company violated the Rules Agreement effective June 1, 1972, as amended, when they arbitrarily dismissed from service Arnoldo R. Hinojosa, Jr. That the Company denied Mr. Hinojosa, Jr. a meaningful hearing, therefore, dismissal from service was unreasonable, harsh, unjust and displayed a complete abuse of discretion and otherwise denied Mr. Hinojosa, Jr. due process.**
- 2. Mr. Arnoldo R. Hinojosa, Jr. should be reinstated to service and compensated for each workday at the rate of his last position held commencing February 2, 1994, and continuing each and every workday thereafter until adjusted. 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 or will be deprived him on account of the Company's unjust, unreasonable and arbitrary action.**
- 3. Mr. Arnoldo R. Hinojosa, Jr. should have all agreement rights restored, including the premiums for Travelers Group Insurance and Policy GA 23000. He should be reimbursed for medical and dental expenses occurring to him and his dependents while so improperly withheld from the Company's service.**
- 4. Mr. Arnoldo R. Hinojosa, Jr.'s personal record should be cleared from the Notice of Hearing dated January 25, 1994."**

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.

On the date this incident occurred, Claimant was protecting the 11:00 P.M. Laredo Yard Clerk's position from the Extra Board. In the early morning of October 31, 1993, Train No. 7 reported a rough track condition on the west switch and frog on the main track at Agua Dulce Grain Company to Chief Clerk Cavazos at Corpus Christi, Texas. At approximately 10:30 A.M. a derailment occurred at MP 130, involving two locomotives, 16 loaded and five empty cars. Claimant was notified to appear at an Investigation concerning the derailment on January 25, 1994. Following that Hearing, Claimant was discharged.

The Organization raised a procedural objection concerning the fairness of the investigatory Hearing. Specifically, the Organization maintains that the Hearing Officer had prejudged Claimant and ran the Hearing as a "kangaroo court." It further argues that the Hearing Officer was far too involved in the circumstances from the outset of events prior to the Hearing to conduct a fair trial. A critical review of the entire transcript fails to support the Organization's contention in this matter. While there were strong words exchanged between Claimant's representative and the Hearing Officer, with no little testiness on both sides, the Hearing was ultimately conducted in a fair manner and Claimant had ample opportunity to present his defense.

With respect to the merits of the case, the Board is faced with diametrically opposite versions of the events transpiring prior to the derailment. Chief Clerk Cavazos testified that he notified Claimant concerning the rough track condition. Claimant initially testified that he received no such call, then admitted that he may have received the call, but because he was "very busy" that night, forgot to act on it.

Upon reviewing the transcript, the Board finds itself in agreement with the Carrier's determination that Cavazos is the more credible witness. In view of Claimant's prior discipline record, and his short tenure with the Carrier (less than one year) the ultimate penalty of dismissal was not excessive under the circumstances.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

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