

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32286
Docket No. MW-32999
97-3-96-3-389

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Kansas City Southern Railway Company
((former SouthRail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension imposed upon Heavy Machine Operator W.P Corbett for alleged ‘... violation of General Notice, Rules L, N, 107, H-163, H-261, and H-338 of the Maintenance of Way and Signal department’ was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement (Carrier’s File 013.31-506 SRL).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be ‘... exonerated of all charges in accordance with RULE 33(g) and reimbursed for all wage loss ****’”

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.

The Claimant was assessed a 30-day suspension for 1) running through a switch while operating a Tie Handler on-track vehicle resulting in a derailment that blocked Carrier's main line for several hours and 2) improper reporting of the accident.

Carrier supervisors, after conducting an on-site inspection and talking with the Claimant, notifying Claimant of a formal investigatory hearing, and conducting that hearing, concluded that the physical evidence was consistent with Claimant having run through a switch.

The Organization contended that Claimant had been derailed by a broken tie, that the charge notice was vague and that it was the foreman's responsibility to report the accident.

The Board finds that the Carrier's notice of formal investigation apprised the Claimant of the charges being investigated and provided time to prepare a defense. This Board also finds that there was substantial evidence adduced at the hearing to support the charge of running through a switch.

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 13th day of November 1997.