

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33021
Docket No. MW-33975
99-3-97-3-492

S
Continuation of previous award
regarding evidence/ testimony with
transcript.

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [withheld from service and subsequent thirty (30) day actual suspension] imposed upon Messrs. R. D. Wright and R. E. Evans ‘*** in connection with a 704 incident at Milepost CAB 108.8, Rivanna, Subdivision, West Switch Norwood at/or about 1915 hours on April 30, 1996,’ was unwarranted and extremely harsh [System Files C-M-6390/12(96-931) and C-M-6391/12(96-932) COS].
- (2) As a consequence of the violations referred to in Part (1) above, Claimants R. D. Wright and R. E. Evans’ records shall be cleared of any reference to the charges leveled against them and they 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 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 April 30, 1996, Claimant Evans was putting away three pieces of equipment at Norwood Siding. One piece of equipment passed the insulated joint from the siding, triggering a red signal on the track, interfering with the passage of Train V95329.

On May 7, 1996, the Carrier instructed the Claimants to attend an Investigation on May 20, 1996. The notice charged them with responsibility in connection with the April 30 incident. The Investigation was held, as scheduled. On June 7, 1996, the Carrier notified the Claimants that they had been found guilty of the charges and were suspended for 30 days each.

The Organization contends that, as to Claimant Evans, the Hearing was not held in a timely manner. Furthermore, the Organization maintains that the Carrier failed to prove the charges against either Claimant. The Carrier, on the other hand, contends that it afforded both Claimants a fair Hearing and proved the charges against both of them by substantial evidence.

At page five of its Submission, the Carrier asserts, "[A] thorough review of the transcript reveals that substantial evidence was adduced to find claimants guilty of the charge." Similarly, on page six of its Submission, the Carrier maintains, "In the instant case, there is 'relevant evidence as a reasonable mind might accept as adequate to support a conclusion' revealed in the transcript, and as such, Carrier has met its burden of proving the charges against claimant by substantial and convincing evidence." However, the Carrier failed to delineate the specific evidence from the transcript that it contends supports the findings of guilt.

In our review of the transcript we were unable to uncover any evidence supporting the findings of guilt. The record reveals that Claimant Evans was the Assistant Foreman on Surfacing Gang 5XS4. The Gang was working on a territory with which they were not familiar and on which they were not qualified. Rather than take a day to qualify a member of Gang 5XS4, the Carrier assigned Claimant Wright to obtain track authority for the gang.

On April 30, 1996, Claimant Wright obtained track authority from Mile Post 88.6 to Mile Post 108.8. At the time of the incident, part of the Gang was working at Mile Post 91, while the other portion was working under the direction of Claimant Evans at Mile Post 108.8. Claimant Evans was to clear the track, moving three pieces of equipment onto a spur. However, because of the length of the equipment relative to the length of the track, it was not possible to accomplish this task without tripping the signal unless each piece of equipment entered the spur individually.

Claimant Wright testified that he related the information concerning putting away the equipment to Gang Foreman M. Opsomer and that he (Opsomer) had a chart of the track and spur and acknowledged that the fit would be very close. Claimant Wright agreed and Foreman Opsomer indicated that he would check out the situation. Thereafter, Claimant Wright positioned himself between the two areas where the Gang was working. This was made necessary by the hilly terrain, in order to be able to hear radio transmissions from both sections of the Gang.

There is no evidence that Claimant Wright acted culpably in positioning himself where he did and in relying on Foreman Opsomer to attend to the potentially tight fit and take whatever action might be necessary to put the equipment away properly. Indeed, the Roadmaster testified that Claimant Wright found himself in an unusual situation, controlling two movements at the same time with such a large limit of track authority. The Roadmaster opined that Claimant Wright did the best he could, in view of the magnitude of the limits that day.

Claimant Evans testified that neither Foreman Opsomer nor the Supervisor instructed him as to the limits he would encounter on the movement to the siding and neither advised him that he would have to put one piece of equipment in the siding at a time to remain within the limits. Notably, Foreman Opsomer did not testify. On this record, we cannot find substantial evidence that either Claimant Evans or Claimant Wright was culpably responsible for the April 30 incident.

AWARD

Claim sustained.

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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 25th day of January 1999.