

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36847
Docket No. MW-36828
04-3-01-3-400

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The twenty (20) day suspension and restrictions placed on the seniority of B&B Foreman R. G. Leshure for his alleged violation of CSX Operating Rules 409, Part 3 and 704-C on August 28, 2000 was without just and sufficient cause, based on unproven charges and in violation of the Agreement [System File D21705900/12(00-0821) CSX].
- (2) As a consequence of the violations referred to in Part (1) above, B&B Foreman R. G. Leshure shall have his record cleared of this incident and be paid for all time and benefits lost.”

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 case involves a 20-day suspension of B&B Foreman R. G. Leshure for violation of two Rules designed to insure the safety of railroad employees while they are working on tracks, in this case tracks on a railroad bridge. The first of those Rules, CSXT Operating Rule 409, part 3, requires employees responsible for on-track safety, in this case an employee in charge of a work force, to have a working radio in order to monitor transmissions from train movements. The second of those Rules, CSXT Operating Rule 704-C, requires a force making minor track repairs to have a watchman/lookout who shall "devote full attention to detecting the approach of trains and communicating a warning thereof, and shall not be assigned any other duties while functioning as watchman/lookout." According to the Carrier, the Claimant violated those Rules while working as a B&B Foreman on a bridge repair force on August 28, 2000.

On that morning, the Claimant and Mechanic J. L. Smiley were assigned to repair a hole in a bridge by covering the hole with a piece of plywood and filling it with ballast. The hole was in between the two rails, in the middle of the track, about ten feet from the end of the bridge. They were given a job briefing prior to leaving for the work site by Bridge Supervisor C. A. Wiggins, who instructed them to use a watchman/lookout. After lunch, Wiggins and Bridge Inspector L. L. Edwards went to the bridge, where they found both the Claimant and Smiley working in the track, with no watchman, and no working radio.

Because this was the Claimant's fourth incident involving On-Track Safety Rules, he was charged with violating the two aforementioned Rules and directed to attend an Investigation, which was held on September 26, 2000. As a result of the testimony and evidence adduced during the Hearing, the Claimant was found guilty of the charges and assessed a 20-day suspension by letter dated October 13, 2000.

The record developed on the property raised one procedural objection to the Carrier's disciplinary action. The Organization asserted the Carrier's disciplinary letter was improper because the Claimant was not "... afforded a proper discipline

letter laying out the facts. . . .” No Agreement language has been cited in the record that creates such a requirement. Accordingly, this contention must be rejected.

Our review of the Investigation transcript and the on-property record does not reveal any other procedural irregularities of significance. Although an allegation of prejudgment by the Hearing Officer was made during the Investigation, it was not advanced on appeal. Moreover, the overall context in which the Hearing Officer’s remarks were made does not support the allegation. The Hearing Officer’s Rules compliance remark was made in connection with a discussion about the language of the Rules and the clarity of the text. Substantially all of the testimony had been completed by that point. The testimony up to that point was essentially free of significant conflict. The Claimant admitted he did not have a working radio with him while he was the “employee in charge” and was required to provide full-time watchman/lookout protection for his co-worker. In addition, the failure to have either he or his co-worker devote themselves exclusively to watchman/lookout duties while the other worked is essentially undisputed in the record. Both the Claimant and his co-worker had shovels and were observed by two Carrier witnesses to be shoveling ballast over several minutes. The fact that the Claimant failed to establish and maintain a proper lookout was largely corroborated by the Claimant’s co-worker. Moreover, all three other members of the crew testified that the supervisor’s job briefing informed them of the need to provide watchman/lookout protection for the ballast leak repair job on the main track bridge in question. Although the Claimant did not recall that part of the briefing, he did not deny that it was given. Finally, the Carrier’s disciplinary decision was made by an official other than the Hearing Officer. No prejudgment or other exception was taken to this process in the on-property record.

As suggested by the foregoing discussion, our review of the record finds it to contain substantial evidence in support of the Rule violations charged. The Claimant did not have a working radio with him as required by Rule 409. As the “employee in charge” the Claimant also failed to establish and maintain full attention watchman/lookout protection while he and/or his co-worker fouled the main track.

The on-property record also established, without objection, that the Claimant had three previous On Track Safety Rule violations on his record. Under the

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circumstances, we do not find the Carrier's disciplinary action to be unreasonable or unwarranted.

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 28th day of January 2004.