

Award No. 11003

Docket No. MW-10375

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Section Foreman E. E. Carter was **not** guilty of the unproven charges of **willful** neglect in the supervision of his men on April 30, 1957, or of causing personal injury to A. Harris on that same date, or of failing to properly supervise the **work** assigned to him on April 30, 1957 and;

(2) The Carrier, therefore, improperly suspended Section Foreman E. E. Carter from service beginning with June 1, 1957 and for the remainder of the month of June 1957, and, in consequence thereof;

(3) The record of Section Foreman E. E. Carter shall be cleared of the above-mentioned charges and that Section Foreman E. E. Carter "be compensated in the amount he would have earned had he continued in the service less the amount earned in other employment", all in conformance with the provisions of Section 3, Rule 10 of the effective agreement.

OPINION OF BOARD: The Claimant was a section foreman in charge of a gang of laborers. At the time the incident occurred with which we are here concerned the gang was engaged in removing a piece of abandoned track at Brunswick, Georgia. On April 29, 1957, the gang disconnected the rails, removed the frog and the spikes. On April 30 they were engaged in picking up the rails and loading them on a push cart on an adjacent track. As the laborers picked up one end of one of the rails preparatory to throwing it toward the adjacent track it bounced back injuring severely the foot of one of the laborers. The cause of this was that a spike had not been removed near the end of the rail.

On May 1, 1957, the foreman—Claimant—was charged, in writing, with "violation of Rule No. G-1 in the Standard Book of Rules, willful neglect in the supervision of his men which caused personal injury to A. Harris, colored laborer, April 30, 1957, also Rule No. 1046 in the Standard Book of Rules, 'Section Foremen must direct the work of employes under their supervision and see that they perform their duties properly'".

A hearing was held and subsequently the Claimant was suspended for 30 calendar days. The Claimant seeks to have the discipline removed and reimbursed for lost earnings less any amount earned in other employment.

No contention is made that the proceedings were not in accordance with the appropriate provisions of the current Agreement. It is contended, however, that the testimony at the hearing did not prove that he was guilty of "willful neglect".

The foreman (Claimant) was charged with the violation of 2 rules:

(1) Rule G-1: "Willful neglect in the supervision of his men."

(2) Rule 1046: "Section Foreman must direct the work of employes under their supervision and see that they perform their duties properly."

The phrase "willful neglect" must be intended to cover the situation where an employe acts so carelessly and negligently that it can be presumed he intended the natural and probable consequences of his negligence. If this is the intended meaning of the phrase "willful neglect" then we agree with the Organization that the record does not support a finding of such negligence, i.e., intentional neglect.

However, Rule 1046 places a duty on the Section Foreman to properly supervise the employes under him. The failure on the part of one of the laborers under his supervision to remove the spike is what careful supervision would have detected. The mistake on the part of the laborer does not excuse a failure on the part of the foreman in performance of his duties. A careful review of the record of the hearing supports a finding that the foreman (Claimant) did not properly supervise the work of employes under his supervision, and thus was guilty of the charge of violating Rule 1046.

The penalty assessed would seem to be severe, but in light of his past record and the facts of record before the Division we cannot find the penalty to be so harsh and unreasonable as to vitiate the entire proceedings. Lacking such a finding we cannot, as has been said in many awards, substitute our judgment for that of the Carrier.

For the reasons hereinabove expressed we have concluded that the claim is without merit and should, therefore, be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claims (1) (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1962.