

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22545  
Docket Number MW-22513

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Track Foreman James H. Hollis on May 19, 1977 was without just or sufficient cause and on the basis of unproven and disproven charges (System File B-940).

(2) The charge shall be stricken from the record and the claimant shall be allowed payment for the assigned working hours actually lost while out of service, all in conformance with Agreement Rule 91(b)(6)."

OPINION OF BOARD: Claimant was suspended from service on May 19, 1977 immediately following a costly derailment in the vicinity where he had recently engaged in a track surfacing assignment.

The Organization's General Chairman requested an investigative hearing pursuant to Agreement procedures and claimant was afforded this process on June 3, 1977.

The notice of investigation, dated May 25, 1977 stated that the administrative inquiry would be directed toward developing the facts in connection with his alleged violation of Rules 250, 255, 281, 419 and 425 of the Rules for the Maintenance of Way and Structures.

The hearing officer found him guilty of the charges and he was permanently dismissed from service, effective June 7, 1977.

On July 7, 1977 Carrier informed the General Chairman that while claimant was not solely responsible for the derailment he, nevertheless, had "a certain amount of responsibility" in that he was the foreman. It indicated, however, its amenability to returning claimant to work effective July 11, 1977 but without pay for time lost, which amounted to about sixty (60) days.

The efficacy and justification of this modified penalty has been appealed to us for adjudicatory finality.

In reviewing the investigative transcript and reconstructing the pattern of events preceding the derailment on May 18, 1977, we find that claimant was not responsible for the derailment since the record shows that the section of the track where it took place was in a proper and safe condition when he finished his assignment the previous day. The testimonial record is markedly consistent on this point.

Sixteen trains had passed over that portion of the track during the twenty-seven and one-half (27½) hours period following claimant's last inspection without incident or admonitory comment from the crew members.

On the other hand, claimant's acknowledgment that he had previously encountered problems with track kinking when working welded rail south of the derailment site indicates that he should have been more cautious. Its contiguous location warrants this assessment. As foreman he should have recognized the possibility, although perhaps remote, for a problem to develop. A greater level of prudence was expected.

Because of this finding and our judgment that the sixty (60) days de facto suspension is somewhat excessive when measured against the degree of his incautious deportment, we will reduce the penalty to ten (10) days suspension without pay.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

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That the discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.