

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23365
Docket Number MW-22688

Dana E. Eischen, 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 suspension of Special Equipment Operator R. A. Cordova for alleged violation of General Regulation 176 and Rule 165 of the Rules for Maintenance of Way & Structures was without just or proper cause and on the basis of unproven and disproven charges (System File B-1021).

(2) The charge shall be stricken from the record and Claimant R. A. Cordova shall be reimbursed for the monetary loss suffered as stipulated in Agreement Rule 9(c)."

OPINION OF BOARD: Claimant was employed by Carrier as a Special Equipment Operator. During the dates in question he was assigned as Operator of the DL-920, an on-track dragline used in connection with track maintenance. His duties included securing the crane at the end of his tour.

On September 8, 1977 at approximately 8:30 p. m., Crane DL-920 rolled from the cement track on which it had been parked onto the passing track, where it struck a derail. Claimant was subsequently notified as follows:

"Please arrange to report to my office September 16, 1977 at 1:00 P. M. for a formal investigation to determine your responsibility, if any, for the alleged violations of General Notice, Paragraph 3, General Rules A & B and General Regulations 176, 177, 260A, 321E and 323 concerning derailment of the DL 920 September 8, 1977 at approximately 8:30 P. M. at the West End of Arlington Pass.

"You may be represented at the investigation by a duly accredited representative of the Brotherhood of Maintenance of Way Employees."

Hearing was held Monday, September 19, 1977. Following the hearing, Claimant was suspended from service, without pay, beginning October 3, 1977 through October 7, 1977 "for the violation of Rule 176 and Rule 165 of (Carrier) Rules for the Maintenance of Way & Structures." Claim was filed by the Organization on behalf of Claimant. The Claim was denied at each successive level.

The Rules of import to the instant case read as follows:

Rule 176:

"Employees who are negligent or indifferent to duty, insubordinate, dishonest, immoral, quarrelsome, insolent or otherwise vicious, or who conduct themselves and handle their personal obligations in such a way that the railway will be subject to criticism and loss of good will, will not be retained in the service.

"Employees failing or refusing to pay their just debts, or against whom bills are frequently presented to the railway for payment will, unless satisfactory reason is given, be dismissed from the service.

"Unauthorized assignment of wages by employees is prohibited and will be sufficient cause for dismissal.

"Employees must show on time slips, time books or payrolls required information as to work actually performed."

Rule 165:

"The normal position of a main track switch is for main track movement and it must be lined and locked in that position except when changed for immediate movement. When a main track switch is lined in other than normal position, an authorized employee must remain near enough to switch to be able to line it for main track upon the approach of a train.

"Normal position for switches leading from siding when not in use is lined for siding and locked.

"When a train is approaching or passing, employees must not unlock a main track switch or stand within 30 feet of such switch.

"Immediately after lining and locking switch for the main track, the employee handling switch must see points fit properly, calling attention of those concerned in following manner: 'Switch lined and locked for the main track'. This statement must be acknowledged in similar words by one or more employees who observed switch lined and locked. When two or more track cars are using the same switch, the man opening the switch must reline it in normal position.

"Derails must be in derailing position and locked after having been used."

According to the report of Special Agent Leonard F. Myers, entered without objection as part of the hearing record, Crane DL 920 was found derailed with the miner handbrake not set and the switch type derail lined for the controlled siding. In his testimony Claimant maintained that the derail had been lined properly and locked. Claimant's own witness Foreman W. L. Daily testified that there had been no lock on the derail for at least five years. Special Agent Myers reported finding no chunks of wood at the derail site to indicate the crane wheels had been properly blocked. Claimant and his foreman testified at the hearing that the wheels of the crane had been properly chunked, front and back.

Carrier resolved this direct credibility conflict against Claimant, assessing as discipline five days suspension without pay. We find no reason to overturn Carrier's judgment. Nor do we find the penalty assessed to be unreasonable or excessive. Accordingly the Claim is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1981.