

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24080
Docket Number MW-24101

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Detroit, Toledo and Ironton Railroad Company

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

(1) The thirty day suspension (5 days actual and 25 days record) imposed upon Section Foreman Hobert Back for alleged failure to properly line 'the south switch of Thackery Siding' on February 5, 1979 was unwarranted, on the basis of unproven charges and in violation of the Agreement.

(2) Section Foreman Hobert Back shall now be allowed the benefits prescribed in Agreement Rule 34(a).

OPINION OF BOARD: Claimant is a Section Foreman who was directed, with two crew members, to perform switch-cleaning duties involving snow removal. He was charged with failure to realign a switch which resulted in a train "encountering and running through an improperly lined main track switch" and was subject to an investigative hearing. Cited in the Carrier's investigation notice were Rule "N" and Rules 866 and 869.

In particular, Rule 869 reads in pertinent part that Maintenance of Way Foremen "must personally attend and supervise the opening and closing of switches."

The Organization argues that the Claimant was not subject to a fair and proper investigative hearing, since one Carrier representative issued the notice of the hearing, conducted the hearing, reviewed the results, and determined the disciplinary penalty. While there are instances in which a hearing officer's multiple role may well interfere with his impartial conduct of the hearing, the Board does not find this to be the case here. The hearing officer was in no way connected with the incident itself; the Claimant and the Organization were not impaired in their presentation in any way; and the determination of penalty after a hearing by the hearing officer is not prohibited by rule.

The record shows that the Claimant and his crew members were directly involved with cleaning the switch just prior to its being overrun by a train. The Carrier had proper grounds for holding that the Claimant was responsible for failing to determine that the switch was properly set after the cleaning had been completed. This failure could have led to serious consequences and did in actuality result in train delay and switch damage.

The thirty-day suspension (of which only five days was an actual suspension) was not inappropriate.

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

That the Agreement was not violated.

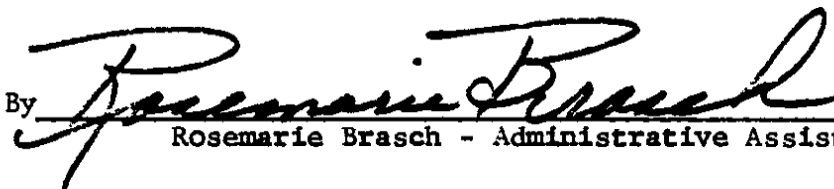
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January 1983.

