

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24391
Docket Number MW-24336

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Missouri-Kansas-Texas Railroad Company

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

(1) The thirty (30) calendar days suspension imposed upon Ralph M. Heiney for 'alleged rule violation when you were blowing holes with cutting torch in rail to place angle bars on broken rail July 1, 1980' was unwarranted and wholly disproportionate to such charge (System File 200-163/2579-23).

(2) The claimant shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, Ralph Heiney, who was employed as a Track Foreman, was working near Pryor, Oklahoma, on July 2, 1980, when he burned holes in a rail with a cutting torch in order to facilitate a broken rail repair. On July 11, 1980, Claimant was instructed to appear for a formal hearing into the matter. Carrier alleged that this act constituted a violation of Rule H:

"Employees who are careless in the safety of themselves or others, indifferent in the performance of their duties, insubordinate...will not be retained in the service."

A hearing was held in the matter on July 21, 1980. Claimant was found guilty as charged and assessed a 30-calendar-day suspension. The transcript of that hearing has been made a part of this record.

A review of the record reveals that Claimant was afforded a fair and impartial hearing and that he was, in fact, guilty of not following orders. While the order not to burn holes in rails given to Heiney by Roadmaster Aslip may not have been communicated in the politest terms, Aslip made his point. Claimant knew that he was not supposed to make repairs to rails by burning holes in them. A rail drill was to be used, regardless of the delay caused by having to obtain one.

This Board, however, feels that even though Claimant was in violation of an order, he did utilize the procedure of burning holes in a broken rail to facilitate a repair. He allowed a switch engine to proceed and the rail was changed out the next day without his being ordered to do it.

This Board does not condone using short cuts in bonafide procedures to get a job done, but it does feel that Carrier could make its point in this case with a much lower level of discipline than a 30-day suspension.

In light of Claimant's unblemished record, his years of service, and his obvious desire to keep the railroad running, we think that a 15-calendar day suspension would be more than adequate to get Claimant's attention on this point.

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

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1983.

