

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24971
Docket Number MW-25168

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation
(Northeast Corridor

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

(1) The disciplinary demotion of Track Foreman T. Lorick, Sr. and his disqualification as track foreman for alleged violation of 'Rule 99(a)' and 'Rule 101' was without just and proper cause and on the basis of unproven charges (System Docket 282D).

(2) Mr. T. Lorick, Sr.'s seniority as track foreman shall be restored and unimpaired and he shall be allowed the difference between what he would have received at the track foreman's rate and what he was paid in a lower rated position until he is returned to work as a track foreman with seniority as such unimpaired."

OPINION OF BOARD: By letter dated October 5, 1981 the Claimant, T. Lorick, Sr. was notified to attend a trial on October 15, 1981 to determine his responsibility, if any, with respect to his alleged violation of Carrier Operating Rules and Instructions 99(a), 101 and 910. Mr. Lorick was specifically charged with allegedly permitting contractor's equipment to use track No. 2 beyond limits specified in Train Order No. 419 and with fouling a gauntlet track without permission at or near Pennsylvania Avenue in the B & P tunnel on September 21, 1981. After the hearing was held on October 15 and 22, 1981 the Claimant received notification dated November 5, 1981 that he had been found guilty as charged. He was disqualified as foreman.

A review of the record shows that the Claimant admitted in the hearing that he was aware of his responsibility with respect to all activities occurring on the track which was out of service and in his name on September 21, 1981. The record further shows that Train Order No. 419 which the Claimant had received on the day in question specified that a barricade was erected at MP 97.3 on No. 2 track. Contrary to directives found in the Train Order, however, the Claimant permitted the passage of the contractor's crane beyond MP 97.3 thus fouling the gauntlet track in the B & P tunnel. This was done without required permission with potential consequences which could have resulted in a collision between the contractor's crane and an Amtrak Metroliner which was shortly to pass through the tunnel on the gauntlet track. According to the record the error was corrected shortly before the Metroliner passed. There is sufficient evidence of probative value in the record to warrant conclusion that this claim be denied on merits.

An issue to be further resolved by the Board is whether the penalty assessed by the Carrier was reasonable. This Board has ruled on numerous occasions that a Carrier may weigh a Claimant's past work history to determine the degree of discipline (Second Division 6632, 8527; Third Division 23508). The record shows that the Claimant had been assessed discipline a number of times within less than two (2) years prior to this incident. All discipline

levied was related to Claimant's violation of Carrier's Rules in his capacity as either Track Inspector or Track Foreman. Rule violations by the Claimant leading to these assessments of discipline resulted in train derailments on two (2) occasions. Further, the discipline received by the Claimant on July 2, 1980 was, according to the record, the result of an infraction somewhat analagous to the issue at bar. In that instance the Claimant was found in violation of Rule 292 of Carrier Operating Rules and Instructions when he permitted track equipment to pass a stop light without proper authority. Given the potential safety hazards to the Carrier, to the Claimant himself and to fellow employes which could have resulted from Claimant's behavior in the recent past and in the instant case, the disqualification assessed by the Carrier cannot be construed as arbitrary, unjust nor unreasonable.

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 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

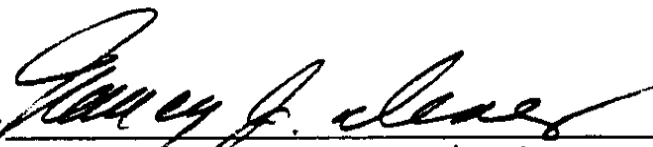
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

