

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25422
Docket Number MW-25330

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Missouri Pacific Railroad Company

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

(1) The sixty (60) days of suspension imposed upon Patrol Foreman G. DeVance for alleged "failure to comply with the provisions of General Rule C (in Part), Rules 240 and 242" and for alleged "failure to properly inspect and repair guard rail on the crossover switch from siding to L&A interchange tracks" was arbitrary, improper and on the basis of unproven charges (Carrier's File S 310-480).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including holiday and overtime pay.

OPINION OF BOARD: After an investigation in which the Carrier's Roadmaster testified a May 20 derailment had been caused by a loose guard rail and tight gauge, Claimant was suspended for sixty days. Claimant, a Patrol Gang Foreman, was admittedly responsible for inspection of all switches, guard rails and tracks in the area of the derailment. He testified he had inspected the guard rail at 12:20 P.M. on the day before the derailment. He found no defects but made some standard adjustments. He stated there had been no reason to tighten the bolts on the guard rail and he did not note the work done in a record book he keeps because he only logs defects which the Patrol Gang can't repair. The Roadmaster was unable to state how long the loose guard rail condition had existed prior to the derailment but due to build up of grease and dirt on the bolts was of the opinion it had been "quite a while" since a wrench had been used on them.

The notice of investigation informed Grievant the purpose was to:

"develop the facts and place responsibility if any, in connection with your alleged failure to properly inspect and repair guard rail on crossover switch...while you were working as Patrol Gang Foreman...which caused derailment to eleven cars...at 4:10 P.M. on May 20, 1982."

The subsequent suspension was stated to be for:

"failure to comply with the provisions of General Rule C (in part), Rules 240 and 242 of the Rules and Regulations for the Maintenance of Way and Structures...and for your failure to properly inspect and repair guard rail on the crossover switch..."

Rule C states in part that:

"Employees who are careless of the safety of themselves or others, negligent...will not be retained in the service."

Rule 240 defines the duty of Track Foreman and states they are responsible for the condition of and the safe...maintenance of track, roadbed...road crossings.... while Rule 242 deals with inspection of a territory. These rules were read into the record at the investigation.

The Organization argues Claimant had not been charged with violations of General Rule C or Rules 240 and 242 and therefore hadn't been advised of the specific charges against him as required by Rule 12, Section 1(a) and (b). Although the Carrier maintains this position had never been taken during handling on the property we note that in correspondence on July 8, 1982, the Organization wrote "...rules of our agreements are in violation especially Rule 12 of current agreement" and in letters of July 21 and August 18 again referred to "especial Rule 12" as having been violated. The Organization also contends the Carrier produced no probative evidence to establish Claimant had not properly performed his duties and further maintains the discipline imposed was excessive.

A principle often stated in Third Division Awards and especially in 18872 is applicable to this case. Thus:

"We have held many times that it is not necessary that the rule which a claimant allegedly violated be set forth in the notice. The test is whether the notice is sufficient to fairly apprise the Claimant of the nature of the offense charged so that he can adequately defend himself."

The notice sent Claimant was very specific. He was informed of the charges he was being required to meet. General Rule C in part, Rule 240 and 242 were read into the record without objection. Claimant was in no way misled or deceived. (Award 11443)

In view of the testimony of the Roadmaster, the record contains substantial evidence to support the Carrier's finding of failure to properly inspect and repair the guardrail. Accordingly, this Board will not disturb the penalty imposed. The Claimant's record is good but the discipline cannot be said to be excessive in view of the seriousness of the infraction.

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

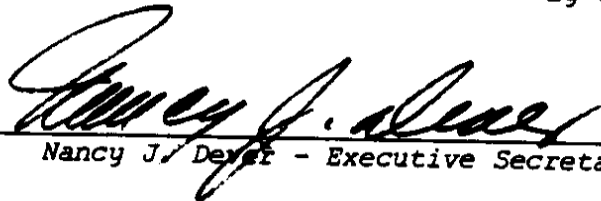
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.