

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25972
Docket Number MW-25794

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (Amtrak)

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

(1) The 'Five (5) Days Suspension - Held in Abeyance' imposed upon Trackman R. W. Bayly for alleged violation of Rule 'F' was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-478D).

(2) The claimant's record shall be cleared of the charge leveled against him."

OPINION OF BOARD: Claimant R. W. Bayly was charged by letter of June 17, 1982 with an alleged violation of Rule 'F' which pertains to safety compliance. The specification of the charge indicated seven prior personal injuries as well as an eighth occurring on June 3, 1982 which precipitated the trial. Following the trial, Claimant was found guilty as charged and assessed a discipline of five (5) days suspension to be held in abeyance.

Both the Organization and the Carrier allege separate issues involving time limits; the Organization with respect to a charge going back to 1977 and the Carrier with a procedural deficiency on the part of the Organization in processing the Claim. After a careful evaluation of the issues as handled on property and the seriousness of the charge this Board disposes of those allegations by going directly to the merits of the case.

With respect to Carrier action in the instant case the record provides strong, convincing and uncontroverted probative evidence to substantiate Carrier's finding of guilt. In all, the Claimant was involved in eight personal injuries. Even if arguendo such injuries were not all due to Claimant's failure to exercise care, the record discloses both a consistent pattern of safety violations and the Claimant's failure to benefit from instructions. The several Accident Investigation Committee Reports when taken together also show a pattern which supports Carrier's finding of guilt. Such additional evidence of Violation Reports (Form 490) only round out an already sound basis for Carrier's action and proof of the charges. In the instant case, this Board on the whole of the evidence would find the Claimant guilty of a Rule F violation based on the last charge alone, which was proven and timely.

In view of the record before this Board, we cannot conclude that Carrier's determination in this matter was arbitrary, capricious or unreasonable. This Board will not disturb Carrier's assessed discipline. All other matters raised on property are herein resolved by the finding of guilt and concurrence with Carrier's assessed discipline of five (5) days suspension - - held in abeyance.

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

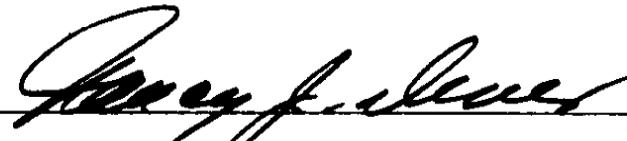
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.