

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26060  
Docket Number MW-26230

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Chesapeake and Ohio Railway Company  
( (Southern Region)

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

(1) The dismissal of Trackman D. A. Eastham for alleged 'violation of Operating Rule "G" and damage to Railway backhoe', was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File C-D-2065/MG-4393).

(2) The claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all others rights unimpaired and he shall be compensated for all wage loss suffered".

OPINION OF BOARD: This dismissal followed an Investigative Hearing of December 12, 1983, in which Claimant was charged with "violation of Operating Rule 'G' and damage to Railway backhoe . . . ."

It cannot be ascertained which of Claimant's activities could have violated provisions of Rule "G," because the contents of the Rule do not appear in the record. Carrier therefore has not borne its burden of proof of identifying the Rule's provisions that are in point and then proving that Claimant violated same.

Now we consider the remaining violation charged, damage to the backhoe. The Hearing Officer heard substantial evidence, amply corroborated, of considerable damage done to Carrier's equipment during the protracted handling by Claimant. It was a reasonable decision that Claimant merits being disciplined.

But on basis of the record before us, the severe penalty of dismissal is deemed excessive. We reduce it to a long suspension, reinstating Claimant to service with seniority and all other rights unimpaired, but with no compensation for time lost.

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 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:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois this 8th day of July 1986.

