

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26491
Docket Number MW-26142

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The disciplinary disqualification of Mr. J. L. Craig as track foreman and the twelve (12) working days of suspension imposed upon him for alleged 'failure to comply with MW-4, Part 1, Sections 213.5(a1) and 213.6(a) causing derailment of Train BUOI-5, head Engine 3327, on the Corning Secondary at Beaver Dams, New York, Wednesday, June 15, 1983' was without just and sufficient cause and on the basis of unproven charges (System Docket 358D).

(2) Mr. J. L. Craig's seniority as track foreman shall be restored and unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, with a seniority date of May 1, 1952, (and Track Foreman's seniority of April 13, 1968) was a Section Foreman at the time of the incident involved in this dispute. On June 15, 1983, at about 7:30 A.M. Claimant was sent to MP 55.8 to line a joint that had kicked out. The work consisted of resting the rail in three places, lining the track and replacing ballast. The entire job took about forty-five minutes. Subsequently a northbound freight passed over the track which had been repaired. Later in the day a southbound freight of 103 cars passed over the spot and after about eighty-three cars passed over the spot a derailment occurred.

As a result of the accident, on June 16, 1983, Claimant was charged as follows:

"To determine your alleged failure to comply with
MW-4, Part 1, Sections 213.5 (a)(1) and 213.6 (a)
causing derailment of Train BUOI-5, head Engine
3327, on the Corning Secondary at Beaver Dams.,
N.Y., Wednesday, June 15, 1983."

Following a Hearing, held on June 30, 1983, Claimant was found to be guilty of the charges and was assessed a twelve day suspension and was disqualified as a Foreman.

Carrier maintains that the derailment which occurred made it quite obvious that Claimant did not properly perform his duties. Carrier points out that Claimant's testimony verified the facts that he did not place a slow order on the track either before or after performing the work and did not place

the track out of service. His testimony that he did not believe these actions were necessary establishes that his judgment was at best erroneous, according to Carrier. Furthermore, Carrier argues that Claimant did not check the gauge in the area and made no determination as to why the track had kicked out at the particular spot. Carrier concludes that Claimant was derelict in his duties and was guilty of the charges; the discipline was appropriate and should be allowed to stand.

The Organization argues that Carrier has failed to prove that Claimant's actions were the direct cause of the derailment. Also Organization notes that the track in question was a 30 MPH secondary track but the tapes indicated that the train which was derailed was traveling at 32 MPH at the time of the derailment. Further, it is maintained that Claimant's responsibility was to repair the track and put out a slow order if the track still did not comply for 30 MPH service. Claimant did all that was required of him.

The Board notes, initially, that the Claimant's Supervisor, as well as the Supervisor of Track Inspection were aware of the problems with the particular segment of track and did not feel a slow order on that track was required for a day prior to the repair work being ordered. It is also clear from the testimony at the investigation that the train crew of the train which was derailed observed no irregularities while travelling over the rails (some 80 cars passed the point prior to the derailment). It is also apparent that Carrier attributed the derailment to a sun kink.

A careful evaluation of the testimony presented at the Investigation indicates no evidence whatever to establish Claimant's guilt of the charges. The two facts, the repair activity and the derailment, do not per se indicate Claimant's culpability. The Board concludes that Carrier has not borne its burden of proof in this case.

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 violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of September 1987.