

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company

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

(1) The thirty (30) days of suspension and disqualification as track foreman imposed upon Track Foreman A. E. Walters for alleged responsibility 'in connection with the incident that occurred at approximately 2:05 P.M., on June 5, 1984 in the vicinity of Mile Post 524.5 when Extra 640 North found your truck, MW 559 occupying the main track and moving North' was unjust and unwarranted (Carrier's File 013.31-298).

(2) Mr. A. E. Walter's (sic) seniority as track foreman shall be restored and unimpaired, his record shall be cleared of the charges leveled against him, he shall be allowed the difference between what he would have received at the track foreman's rate and what he was paid during the time of his disqualification and he shall be compensated for all wage loss suffered as a result of his suspension from service."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On June 5, 1984, at about 2:05 p.m., Carrier's Extra Train North found a section truck occupying the main line at Mile Post 524.5. An investigation was held on July 6, 1984, to determine Claimant's responsibility, if any, in connection with the above situation and subsequently he was disqualified as a Foreman and assessed a thirty (30) days suspension commencing Monday, July 23, 1984, and ending August 21, 1984. This discipline was contested by Claimant and later appealed consistent with the controlling Agreement to the Board.

In defense of the Claim, the Organization argued that it would not have been logical or feasible to clear the Claimant's truck from the track prior to the actual time he was mindful of Extra Train 640's location, since he believed that he had thirty (30) minutes in which to perform his assignment of patrolling track prior to the arrival of Extra Train 640 from Shoreline, Louisiana. During the investigation Claimant noted that he cleared the South-bound Bloomburg Turn Train at Vivian, Louisiana and was aware that said train would travel to Shoreline, before Extra Train 640 left that location. In essence, he maintained that he exercised every reasonable precaution under these circumstances to prevent "mishap or misunderstanding."

In support of its disciplinary actions, Carrier contended that a careful examination of the investigation's trial record clearly establishes that Claimant failed to make any effort to contact Extra Train 640 and, importantly, he did not clear the train ten (10) minutes prior to its arrival as required by Rule 130. The Locomotive Engineer operating Extra Train 640 testified that he had not had radio contact with Claimant until he saw the section truck in the vicinity of Mile Post 524.5 and only after he had stopped the train. Carrier further observed that in response to several pointed questions regarding Claimant's realization as to whether he violated several specifically cited safety rules, Claimant acknowledged that he violated these rules. This would include Rule 130 of the Rules and Regulations governing Maintenance of Way and Signal Department Employees. Rule 130 reads: "The time of trains must be cleared not less than 10 minutes." Carrier also raised a procedural concern, wherein it contended that the instant claim was defective, since it was not appealed to the Board within the time limits of the Agreement Rule.

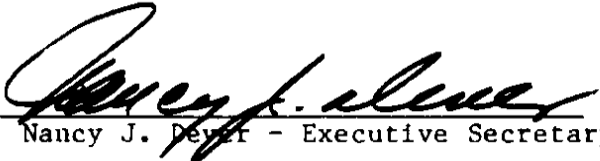
In considering this case, we must reject Carrier's contention that the claim was not appealed to the Board in timely fashion. We agree with the Organization that its notice of July 17, 1985, was technically filed with the Board within the prescribed time limits and our July 22, 1985, notice to Carrier, notifying the Employer of this appeal action did not moot the claim.

On the other hand, when reviewing the investigative transcript, particularly Claimant's admission that he violated the safety rules cited and the essential vagueness of his rendition of events, we must agree with Carrier that he manifested poor judgment on June 5, 1984. A serious accident was indeed possible under the circumstances then existing and a breach of the applicable safety rules certainly warrants corrective disciplinary action. However, we believe that his error in judgment warrants disqualification as a Foreman, but the additional penalty of suspension is somewhat excessive, given the significance of demotion. Accordingly, the thirty (30) days suspension is reversed and Claimant is to be made whole for wages lost, during the time said suspension was served. This modification is conceptually consistent with our holdings in similar type cases. (See, for example, Third Division Award 23848.)

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.