

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The one hundred and twenty (120) days of suspension imposed upon Section Foreman D. G. Stone for alleged violation of Rules A, J, 406 and 1420 was excessive and an abuse of the Carrier's discretion (System File D-52/013-210-S).

(2) Section Foreman D. G. Stone shall be allowed the remedy prescribed in Rule 48(h)."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant was hired by the Carrier on June 3, 1975. On August 23, 1985, while holding the position of section foreman, Claimant was assigned to Section 6163 at Murtaugh, Idaho. At approximately 9:00 AM, the Train Dispatcher issued Claimant track warrant Number 732 and gave Claimant line 9 of the warrant for Extra 3697. The Claimant correctly repeated to the Dispatcher track line 9. Line 9 prohibited Claimant's motor car from being on the track until Extra 3697 had passed.

Claimant, however, was distracted during his discussion with the Train Dispatcher and misunderstood the communication. Consequently, Extra 3697 and Claimant's motor car collided. Claimant and his three crew members jumped from the motor car immediately prior to impact. No personal injury was incurred, but the motor car was demolished.

The only issues before the Board are procedural in nature. First, the Board finds without merit the Organization's contention that the safety violation in question was not a serious violation as is contemplated under the terms of Rule 48(o). Secondly, the record reveals no indication that Claimant's due process rights were prejudiced by the hearing officer's comment regarding Rule 48(o) and its application to the subject facts. Finally, the Board finds no basis upon which to conclude that the Carrier's assessment of a 120 day suspension to the Claimant was excessive or otherwise inappropriate.

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 29th day of March 1989.