

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company

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

(1) The ten (10) days of suspension imposed upon Track Laborer J. O. Jones for alleged violation of Soo Line Engineering Department Operating Rule E-1025, Safety instructions Nos. 153(c), 170, 294 and General Rules A, B and D on October 20, 1987 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C #03-88/800-16-A-85).

(2) The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage and benefit loss suffered."

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.

Claimant was assigned as a Laborer with Gang Z70, helping a locomotive crane operator. In the course of operations on October 20, 1987, the locomotive and ballast car then in use attempted to couple on to flat Car OTTX 90514. This attempt was unsuccessful, but the flat car proceeded on its own on a downward grade and traveled two or three miles.

The Claimant was responsible earlier for securing the flat car on the track. He did so by placing three wood blocks under the wheels. He did not apply the hand brake on the car.

The car eventually came to a stop. A runaway car passing one or more grade crossings is obviously a serious matter.

As a result, the Claimant was served with the following disciplinary notice:

"In connection with the incident on Oct. 20, 1987, where you were working with crane 250114 and where flat car OTTX 90514 got away from the crane, you are assessed a ten day suspension commencing with the delivery of this letter."

At his request, the Claimant was subject to an Investigative Hearing. Following the Hearing, the ten-day disciplinary notice was affirmed by the Carrier.

As a procedural matter, the Organization argues that the text of the disciplinary notice was insufficient to provide the specifics of what the Claimant is accused, thus impeding a "fair and impartial hearing," as required by Rule 18. The Board finds that the disciplinary notice clearly referred to the incident and that the Claimant and the Organization were made sufficiently aware of the "incident" to present a full defense of the Claimant.

As to the merits, the repeated attempts to couple the flat car with the ballast car caused the flat car to displace the blocks and proceed on a downgrade for an extensive distance. The hand brake on the car had not been set. The Claimant did get on the flat car and attempted without success to apply the hand brake, which he stated was blocked in by one of the rails loaded on the car.

Although the Claimant stated he did not have access to Carrier rules, he did state that he knew about the need to set a hand brake on a standing car, especially, when on a grade. He testified as follows:

"... you usually either put a hand brake, or block it up, you know and that's what I usually did was block it up anyway. Most of the time I didn't put hand brake on but I did block it up ... Well, it wasn't a steep grade so, you know, I just blocked the wheels, that was it."


The Claimant thus conceded that he was aware of the proper procedure, but failed to take the necessary precaution for a car on a downward grade. The resulting penalty was not inappropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.