

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28568  
Docket No. MW-28943  
90-3-89-3-354

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(CSX Transportation, Inc. (former Chesapeake and Ohio  
Railway Company)

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

(1) The twenty (20) day suspension imposed upon Assistant Track Foreman D. A. Murphy for alleged responsibility of Train No. 317, Engine 2711 westbound, striking undercutter at Mile Post 539.8, on September 7, 1988 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File C-D-4573/12(88-1006) COS].

(2) The Claimant shall have his record cleared of the charge leveled against him, he shall be paid for all wage loss suffered and he shall have twenty (20) days credited toward his vacation qualifying time."

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 September 7, 1988, Claimant was the employee in charge of a undercutter gang doing track maintenance under work authority from the control station. Operating Rule 707 requires trains to secure permission to enter the limits of the work authority from the employee in charge. Claimant authorized a train to proceed westbound on No. 1 track while the undercutter, which was located on No. 2 track was still fouling No. 1 track. The train struck the undercutter, damaging the track equipment and the engine.

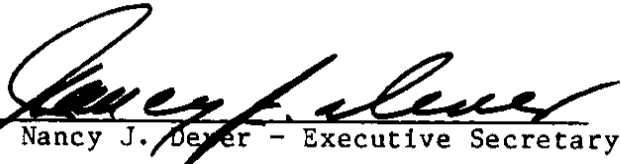
Following a Hearing, Claimant was assessed a twenty (20) day suspension. At the Hearing, Claimant acknowledged that the collision was caused by his not being in a position to know if the track equipment was in the clear, and by poor communication with the operator of the equipment. Based upon this testimony, we conclude that the Carrier had just cause to impose the suspension. The fact that Claimant was working with other employees in the gang did not relieve him of his responsibility for the safety of all of the employees and equipment under his authority as employee in charge.

We find nothing in the record to support the Organization's contention that Claimant was denied a fair and impartial investigation.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.