

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28569
Docket No. MW-28953
90-3-89-3-376

The Third Division consisted of the regular members and in addition 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 ten (10) days of suspension imposed upon Track Foreman K. D. Watts, Jr. for alleged failure to comply with Operating Rule 707-D on October 3, 1988 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File C-D-4705/12(88-1137) COS].

(2) The Claimant shall have his record cleared of the charge leveled against him, he shall receive credit or pay for any benefits lost, he shall be paid for all wage loss suffered and he shall have ten (10) days credited to 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.

Claimant was directed to attend a Hearing at which he was charged with a violation of Operating Rule 707-D following a collision between a train and a high-rail truck on trackage under his control. Claimant was assessed a ten day suspension with a notice that he was found guilty of violating Rule 707-D. There is no evidence in the record to support the Carrier's conclusion that Claimant violated Rule 707-D. Accordingly, we must reverse the Carrier's disciplinary action.

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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

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