

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad)

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

(1) The thirty (30) day suspension imposed upon Mr. E. Johnson for alleged violation of Rule 707 (E) of the CSX Transportation Operating Rules on September 25, 1989 was arbitrary, capricious and excessive [System File EJ-89-58/12(89-998) SSY].

(2) As a consequence of the aforesaid violation, Mr. E. Johnson shall be allowed the remedy in Rule 39, Section 5, i.e., his record shall be cleared of the charge and he shall be compensated for all wage 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.

On the date in question, Claimant was assigned as a Bridge Foreman supervising mainline work at Milepost SP 762.2 under the protection of Work Authority No. 16052 issued under the provisions of Rule 707. Rule 707 reads in pertinent part:

"* * *

(d) Advance Warning Signs must be placed at least two (2) miles in advance of the entrance to the work limits, if feasible. Conditional Stop Signs must be placed at the entrance to the limits listed on the work authority.

These signs must be placed in the direction of approach to the right of each track affected prior to the effective time of the work authority and promptly removed when the work authority expires or has been canceled.

(e) The employee in charge must clear and be reported clear of the track before expiration of the authorized time limit. Before releasing the track, the employee in charge must ascertain that the track is safe for train movement and that all OTE, other equipment and trains that have entered the work limits are clear of the limits, unless other arrangements are made with the train dispatcher. If the track is not clear and safe for train movement, the employee in charge must obtain a new authority from the train dispatcher not less than 5 minutes before the expiration of the time authorized on the work authority, or have a flagman in place the distance prescribed in Rule 99-E, 5 minutes before the expiration time."

The Work Authority issued to Claimant encompassed 10:00 A.M. to 3:00 P.M., the time during which he was authorized to "foul" the track without flag protection. At approximately 3:15 P.M., the Production Gang Foreman heard Train 602 approaching the work site. He then called Claimant on the radio and asked him how long his Work Authority was effective. When Claimant responded that it expired at 3:00 P.M., the Production Gang Foreman called Train 602 and told it to stop short of the crossing near Milepost 765. Claimant used his own portable radio to assure that the Train had received the Production Gang Foreman's message. Train 602 made a normal stop in sufficient time before entering the Claimant's work limits.

By letter of October 4, 1989, Claimant was notified to appear for a Hearing and charged as follows:

"On September 25, 1989 you were working as Foreman of Bridge Force GT77 near Greenville, Florida at Milepost SP 762.2. While working at this location, your Bridge Force was occupying the main track with Mobile Crane 8407 a substantial time after 1500 hours, the time at which your work order had expired. Furthermore, you made no effort to secure the additional track time needed for the job, nor was a flagman positioned as specified in Rule 99-E of CSX Transportation Operating Rules.

You are hereby charged with the violation of Rule 707-E of the CSX Transportation Operating Rules effective April 1, 1989."

Following the Hearing held on October 13, 1989, Claimant was assessed thirty days' actual suspension. The discipline was appealed by the Organization on December 8, 1989, and properly progressed on the property. It was also discussed in conference on April 2, 1990, after which it remained in controversy. Accordingly, it is properly before the Board for resolution.

A review of the record before the Board indicates that during the Hearing Claimant admitted to "overlooking" the expiration time of his Work Order. Accordingly, there is no question that he failed to clear the track in a timely manner. Thus Carrier clearly had cause for administering some measure of discipline. The sole remaining issue is whether the discipline assessed was excessive, arbitrary, or discriminatory under the circumstances. The Organization maintains that in light of Claimant's good employment record, a thirty day suspension is inappropriately severe in this case, particularly since Train 602 did stop in time and no employees or equipment were harmed. Carrier notes that had the Production Gang Foreman not alerted Claimant to the oncoming train, or had the train not been able to stop in time, the results could have been very serious.

Carrier's considerable concern for matters of safety is not unreasonable. In light of the potential for an accident occasioned by Claimant's "overlooking" the expiration of his Work Order, the quantum of discipline imposed upon Claimant was neither arbitrary, discriminatory, nor excessive. Accordingly, the Board will not disturb the discipline assessed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.