

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30059  
Docket No. MW-30401  
94-3-92-3-140

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 Employes  
(  
(CSX Transportation, Inc. (former  
(Louisville and Nashville Railroad Company

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

1. The five (5) day suspension imposed upon Welders W. H. McInvale and H. V. Pipkin, Jr. and Welder Helpers W. J. Culliver and W. C. Dennis for alleged violation of CSX Transportation Safety Rule 12 and CSX Transportation Operation Rule 501 on November 18, 1990 was without just and sufficient cause and on the basis of unproven charges [System File 14(6) (91)/12(91-237) LNR].
2. The Claimants shall receive the benefit of the remedy prescribed by the parties in Rule 27(f)."

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 employe 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 November 18, 1990, the Roadmaster found two pieces of discarded rail along the right-of-way between Mile Posts 640 and 641 on Carrier's M & M Subdivision. It was determined that this rail had been removed by Claimants while they were working behind a rail test crew the previous month. Consequently, Claimants were directed to attend an Investigation at which they were charged with violating Safety Rule 12 and Operating Rule 501, which read, respectively, as follows:

"Rule 12: Good housekeeping is essential for an effective accident prevention program. Employees must keep the area in which they work in a clean and orderly condition. Material will be picked up at the conclusion of each work assignment and in no case will it be left where it could cause a safety hazard."

"Rule 501: Employees must not be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent. They must not willfully neglect their duty, endanger life or property. Employees must not make any false statements or conceal facts concerning matters under investigation."

Following the Investigation, each Claimant was assessed a five day suspension.

Our review of the record shows that there is substantial evidence to conclude Claimants were responsible for leaving the rail along the right-of-way when they finished working. Each Claimant was aware that the Carrier expected scrap rail to be picked up after it is removed. They were also aware that failure to do so results in a hazardous condition.

Nevertheless, we cannot agree that a five day suspension was appropriate for all four employees. Claimant McInvale was the lead employee and must bear a greater share of the responsibility. It was he who made the determination to leave the rail. With over 20 years of experience, he should have known what was required of his new crew. The remainder of the employees took their direction from him. With this in mind, we will uphold the discipline assessed against Claimant McInvale, but reduce the discipline assessed against the remaining Claimants to letters of reprimand.

#### A W A R D

Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: *Catherine Loughrin*  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.