

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30123  
Docket No. MW-28745  
94-3-89-3-117

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Soo Line Railroad Company (former Chicago,  
(Milwaukee, St. Paul and Pacific Railroad  
(Company

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

- 1) The thirty (30) working day suspension assessed against J.A. Davis for alleged failure to properly protect his assignment on October 3 and 4, 1987 was on the basis of unproven charges, excessive an din violation of the Agreement.
- 2) As a consequence of the violation referred to above, the Carrier's decision shall be set aside and the Claimant shall be allowed all wages and benefits lost in connection therewith."

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.

This Claim challenges the 30 working day suspension given to Claimant on October 5, 1987, for failing to protect his assignment on October 3 and 4 1987. At the time of this incident, Claimant was a section laborer regularly assigned to the Glendale section. His seniority dated from August 20, 1986.

For three days prior to October 3, 1987, inspectors from the Federal Railway Administration had inspected the Carrier's yards in

the Milwaukee, Wisconsin, terminal area. The inspectors had cited several track defects. As a result, the Carrier's normal operations were curtailed until the Carrier had completed the required maintenance and repairs. The Foreman's 10 person crew was divided in order to perform the repairs as quickly as possible. An Assistant Foreman was assigned three laborers. The Assistant Foreman's crew worked apart from the remainder of the personnel assigned to the Foreman. The Roadmaster testified without rebuttal that this was considered an "emergency" situation.

On Friday, October 2, 1987, the Roadmaster directed the Foreman that the crews under his direction were to work on Saturday and Sunday, October 3 and 4, 1987. The Foreman then relayed that instruction to the Assistant Foreman.

Claimant did not report for work on either October 3 or October 4, 1987. A second crew member reported for work on October 3, but not on October 4, 1987.

The Carrier contends that the claim should be denied. It argues that its actions were completely warranted and were not arbitrary or capricious. According to the Carrier, Claimant was instructed to report for work on October 3 and 4, 1987 and did not secure permission from the Assistant Foreman to be absent on those days. It is the position of the Carrier that the second employee's absence on October 4, 1987, is not relevant to this matter. The Carrier further argues that the discipline was not excessive.

The Organization maintains that Claimant notified the Assistant Foreman that he would not be available for work on October 3 and 4, 1987. In addition, the Organization contends that Claimant secured the Assistant Foreman's permission to be absent on those days. The Organization thus argues that the Carrier has failed to prove that Claimant did not protect his assignment on the dates at issue. The Organization further maintains that, even if discipline were warranted, the penalty was excessive. In this regard, the Organization argues that Claimant was not treated fairly since a fellow crew member was not disciplined for his absence on October 4, 1987.

The Board has carefully examined the record in this matter and the Parties' Submissions. The Board concludes that substantial evidence in the record supports the Carrier's decision to discipline Claimant. However, the Board further concludes that the penalty was arbitrary and excessive since the second employee was not disciplined even though he had committed a similar, although less severe, infraction. As a result, Claimant's suspension will be reduced to 15 working days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin / lw  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.