

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30126  
Docket No. MW-28873  
94-3-89-3-276

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 Employes  
(  
(CSX Transportation, Inc. (former  
(Chesapeake and Ohio Railway Company)

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

1. The five (5) days of suspension imposed upon Track Foreman R.L. Smith for alleged violation of Rule 707(c) on June 27, 1988, was arbitrary, capricious and on the basis of unproven charges.
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 five (5) 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 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 August 1, 1988, decision of the Carrier to suspend Claimant for violating Rule 707(c) on June 27, 1988. Most of the facts of this matter are not in dispute. Claimant was employed in 1979 and promoted to Track Foreman less than two months before the incident in question. He had an unblemished record as of the incident at issue.

On June 27, 1988, Claimant was assigned as the Foreman over a surfacing gang working on the Peninsula Subdivision. That work

required the ballast regulator to be on the live main track. Such work is governed by Rule 707(c), which provides as follows:

"(c) When track is to be turned over to an employee to work without through-train traffic, temporary speed signs will not be displayed. The following example will be issued to the employee in charge.

**EXAMPLE OF WORK AUTHORITY TO WORK WITHOUT THROUGH-TRAIN TRAFFIC AND WITHOUT FLAG PROTECTION**

You may work on Main track 7:30 AM until 3:30 PM Feb. 29 between MP 29 and MP 29.5 without flag protection. Track will not be entered by trains or on-track equipment except as permitted by employee L.U. Murphy in charge."

Claimant was the "employee in charge" of the surfacing crew on June 27, 1988 within the meaning of Rule 707(c). He received authority to work on the track between Toppings, Virginia (Mile Post 35.3) and Grove, Virginia (Mile Post 32.2). At approximately 2:30 PM, the Roadmaster overheard a radio conversation between Claimant and the ballast regulator operator in which Claimant told that crew member to return within the limits of the 707(c) authority. The ballast regulator operator had been working one to one and one-half miles outside the limits of the authority.

On June 29, 1988, Claimant was charged with three violations. One of the violations concerned the Rule 707(c) authority of Claimant's work for June 27, 1988. That charge stated that "...on June 27, 1988, at or about 1:00 p.m., Mile Post 31, Peninsula Subdivision, you are charged with violation in compliance with Rule 707(c) in that you allowed a ballast regulator to work outside limits of this authority." Claimant was also charged with failing to remove a slow order board and with insubordination in connection with receipt of a letter of instructions from the Roadmaster.

The Investigation was held on July 14, 1988. On August 1, 1988, the Carrier concluded that Claimant was:

"...at fault in that a ballast regulator working under your charge, was allowed to work outside your 707(c) authority work limits [on] June 27, 1988, and therefore was totally unprotected.

....

The discipline administered is five (5) days actual suspension, to commence on August 16, 1988."

No discipline was assessed for the other two charges.

The Carrier contends that Claimant was afforded a fair and impartial hearing in accordance with Rule 21; that it has met its burden of proving that Claimant violated Rule 707(c); that the five day suspension was fully justified.

The Organization argues that the discipline was arbitrary and capricious. The Organization emphasizes that Claimant informed the ballast regulator operator and the other members of the work crew of the work limits in effect on June 27, 1988. According to the Organization, the Carrier failed to present probative evidence that Claimant allowed the ballast regulator operator to work outside those limits, as stated in the charge.

The Board agrees with the Carrier that Claimant was afforded a fair and impartial hearing.

After fully examining the record in this matter, the Board concludes that substantial evidence in the record supports the Carrier's conclusion that Claimant violated Rule 707(c), and that the five day suspension was not arbitrary, capricious, or in bad faith.

A W A R D

Claim denied.

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.