

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31340
Docket No. MW-31820
96-3-94-3-94

Third Division consisted of the regular members and in addition Referee Andree Y. McKissick when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company)

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

- (1) The withholding from service and five (5) days' actual suspension from service of Track Subdepartment Track Welder, D. C. Anderson, for allegedly occupying Main No. 2 without proper flag protection on September 22, 1992, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File D-182/930183).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

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 employee 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 is a discipline dispute involving a Track Welder who allegedly allowed his crew to work on a "live" track with no flag protection and narrowly averted a train wreck by his alleged failure to observe safety rules.

It is the contention of the Organization that since Claimant's supervisor, the Carrier Officer, did not recommend suspension of Claimant, that this incident must not be as serious as the Carrier urges. Moreover, the Organization asserts the Claimant had satisfied his obligations under the pertinent flagging rules and was working on Track 2 as authorized. Lastly, the Organization argues that the Claimant was unjustly suspended without a hearing prior to this Investigation.

The Carrier contends that the record clearly reveals that the Claimant was not given authority to be on Track 2 by his own admission. It is the position of the Carrier that this is a serious safety issue that could have resulted in tragic consequences.

The Board finds that the Carrier met his burden of proof with substantial, probative evidence. The Board concludes that the Claimant's admission supports the Carrier's position. Thus, this claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.