

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32196
Docket No. MW-32781
97-3-96-3-92**

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Atlanta and West
(Point Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) Agreement was violated when the Carrier assessed Apprentice Foreman R. P. Silcox a twenty (20) day suspension and disqualified him for three (3) months based on a charge that was not proven [System File 94-23 AWP/12 (94-0116) AWP].**
- (2) The Agreement was further violated when the Carrier failed to render a decision within ten (10) calendar days from the close of the hearing.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Apprentice Foreman R. P. Silcox shall now have his record cleared of this incident and he shall be made whole 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 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 were given due notice of hearing thereon.

Claimant has been employed by the Carrier since April 23, 1982. At the time of the incident leading to the discipline in question, he was working as an apprentice Track Foreman. On October 28, 1993, the Assistant Roadmaster assigned Claimant to inspect main line track from Social Circle to Lithonia and from Fairle Street through the heavily traveled Hulsey Yard in Atlanta, Georgia, using a hi-rail vehicle. There is no dispute that Claimant was qualified on the Carrier's Operating Rules at the time the incident involved here occurred.

As required by Operating Rule 710 and Atlanta Superintendent's Bulletin No. 3, Claimant obtained track authority from the Yardmaster before entering Hulsey Yard. Claimant was given track authority to proceed south on Main Line 1, then switch to Main Line 2 at "Boulevard" and continue south out of the yard. Claimant drove the hi-rail vehicle south on Main Line 1 beyond Boulevard (he did not recognize the location) and did not switch to Main Line 2 as instructed. A yard crew contacted the Hulsey Yardmaster and advised him that the hi-rail vehicle was directly behind their movement on Main Line 1. Claimant was then instructed by the Yardmaster to back up to Boulevard, pull off the track, and proceed to the Hulsey Yard office.

The next day Claimant was advised he was being held out of service and directed to attend a formal Investigation in connection with the charge that he operated his hi-rail vehicle beyond the routes and limits given by the Yardmaster on October 28, 1993.

Following the November 3 Investigation, and by letter dated November 12, 1993, Claimant was found guilty of the charge and assessed a 20 day suspension and a three month disqualification.

The Organization contends that the charge was not proved; that Claimant had not been properly trained for the duties assigned; that it was a common occurrence for Track Inspectors to become confused about specific locations in Hulsey Yard; that the Carrier failed to render its decision in a timely manner following the Investigation; and that the discipline was capricious.

The Carrier contends that the testimony presented during the Investigation, including that of the Claimant, proved he operated the hi-rail beyond the authority he obtained from the Yardmaster; violation of track authority is a serious offense requiring substantial discipline; the discipline imposed was appropriate under the circumstances; and the decision was timely rendered nine days after the Investigation was closed.

The Board finds substantial evidence in the record supports the Carrier's finding that the Claimant was guilty of the charges and that the discipline imposed was appropriate. The Board does not find the Organization's procedural arguments persuasive.

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 17th day of September 1997.