

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32285
Docket No. MW-32826
97-3-96-3-142

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 Employes**
(**Southern Pacific Transportation Company**
(**Eastern Lines**)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [twenty (20) day suspension] imposed upon Foreman R. Diaz for alleged ‘ ... violation of Rules 1.6 and 20.15 of the Safety and General Rules ... and Chief Engineer’s Instructions 71.2.12.1 and 71.2.12.2 ***’ because of his alleged failure to exercise care to avoid injury to employes under his supervision and to see that they worked safely, in connection with the personal injury sustained by Mr. E. Espinoza on January 23, 1995, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File MW-95-79/MW D95-10 SPE).**
- (2) The discipline [twenty (20) day suspension] imposed upon Assistant Bridge Foreman P.O. Vest for alleged ‘... violation of Rules 1.6 and 20.15 of the Safety and General Rules ... and Chief Engineer’s Instructions 71.2.12.1 and 71.2.12.2 ***’, in connection with the personal injury sustained by Mr. E. Espinoza ‘*** while you were in charge of your gang, in the absence of Bridge Foreman Rudy Diaz on January 23, 1995 ...’, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File MW-95-80/MW D95-9).**
- (3) The discipline [five (5) day suspension] imposed upon B&B Carpenter R. Monita for alleged ‘... violation of Rules 1.2.5, 1.2.7 and 1.6 of the Safety and General Rules ***’, in connection with the alleged incorrect information submitted concerning the personal**

injury sustained by Mr. E. Espinoza on January 23, 1995, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File MW-95-81/MW D 95-8).

- (4) As a consequence of the violation referred to in Part (1) above, Foreman R. Diaz' record shall be cleared of the charges leveled against him, he shall be compensated for all wage loss suffered and properly credited for vacation and all other benefits in connection therewith.
- (5) As a consequence of the violation referred to in Part (2) above, Assistant Bridge Foreman P.L. Vest's record shall be cleared of the charges leveled against him, he shall be compensated for all wage loss suffered and properly credited for vacation and all other benefits in connection therewith.
- (6) As a consequence of the violation referred to in Part (3) above, B&B Carpenter R. Monita's record shall be cleared of the charges leveled against him, he shall be compensated for all wage loss suffered and properly credited for vacation and all other benefits 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 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.

Carrier contends that before discipline was issued to these three Claimants, the triggering incidents were thoroughly investigated and substantial evidence of guilt was

uncovered. The hearing for Claimant Diaz was postponed for good cause and that none of the Claimants had their due process rights violated.

The Organization contends that there was not substantial evidence of guilt. In addition, Carrier violated the agreement in the case of Claimant Diaz when it postponed his Investigation and held his Investigation beyond the fifteen (15) days provided in the Agreement. In addition, the Investigations of Claimants Diaz, Vest and Monita were improper because requested witnesses were not presented and these Investigations were not held on the seniority districts where the alleged violations occurred.

With respect to Claimant Diaz, this Board finds that there was substantial evidence of guilt, that his Investigation was postponed for good cause and that his Investigation was proper.

With respect to Claimant Vest, this Board finds that the record contains substantial evidence of guilt and that his Investigation was proper.

With respect to Claimant Monita, this Board finds the record contains substantial evidence of guilt and that his Investigation was proper.

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 13th day of November 1997.