

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32547
Docket No. MW-32961
98-3-96-3-340

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake & Ohio
(Railway Company - Southern Region)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day suspension] imposed upon Foreman I. L. Cobbs for alleged ' . . . fault in your handling of the switch at Pendleton, which was a direct cause of the derailment.' which occurred on May 17, 1995 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File C-TC-6063/12 (95-0724) COS].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant I. L. Cobbs shall ' . . . be paid for the 30 days discipline he was given, at 8 hours a day, plus overtime he may have lost, at foreman rate, for the dates between June 26, 1995 and July 25, 1995, and that these days be accredited towards vacation and retirement. We also request that this investigation be removed from his record.**

*****"**

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.

On May 17, 1995, two locomotives and four cars of train H 756-17 derailed at the switch located at Mile Post CA 139.1 Pendleton, Virginia.

A team of experienced officers from the Engineering, Mechanical, and Transportation Departments was established and assigned the task of determining the cause of the derailment. After investigating the accident, they were unable to identify a cause for the derailment.

By letter dated May 27, 1995 Carrier notified Claimant and six members of his crew of an Investigation to be held on June 5, 1995 to determine their responsibility, if any, for the derailment. Claimant attended the Hearing and was represented by the Organization. After that Hearing and following a review of the transcript, Carrier determined Claimant was at fault in the handling of the switch at Pendleton, which was a direct cause of the derailment, and assessed Claimant a 30 day actual suspension.

The Organization timely and properly presented a claim charging procedural defect (Carrier failed to timely notify Claimant of the charges against him) and lack of evidence proving Claimant caused the derailment.

The Board concludes that Claimant was timely notified of the charges against him. The charge letter is dated ten days prior to the Hearing, thus giving him sufficient time to prepare a proper defense.

Turning next to the question of guilt, the Board's role is to determine whether substantial evidence exists to support the Carrier's conclusion that Claimant was guilty as charged. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The evidence against Claimant is circumstantial because no one saw him operate the switch. The body of circumstantial evidence includes the following uncontested facts:

- The switch had been properly serviced and maintained on the date of the derailment;**
- Work equipment had been moved through the switch on the date of the derailment by forces under supervision of Claimant;**

- Physical evidence indicated the switch had been locked and lined into the spur track rather than its proper position - the main line;
- There was no evidence of vandalism - the area is isolated and not frequented by strangers.
- There was no credible evidence the switch had been run through;
- There were no other rail movements in the area;
- An improperly set switch caused the derailment;
- Claimant was the last known person to touch the switch prior to the derailment.

Despite the Claimant's denial that he properly lined and locked the switch prior to leaving the area, the weight of the circumstantial evidence supports a conclusion that Claimant was negligent.

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 29th day of April 1998.