

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The discipline (thirty [30] day actual suspension activating a thirty [30] day deferred suspension) assessed Assistant Foreman F. D. Clapp was without just and sufficient cause and unwarranted. (Carrier's File D-11-3-318)
2. Assistant Foreman F. D. Clapp shall be compensated for all wage loss suffered.

OPINION OF THE BOARD:

On July 9, 1980, the Claimant was notified to attend an investigation to be held July 1, 1980, on the following charge:

"Your responsibility in connection with allowing speed swing to continue to work after Train No. 38 had been cleared on Form Y Train Order #211 on Thursday, July 3, 1980."

The Carrier found the Claimant guilty and assessed a 30-day suspension in connection with the above charge and the Claimant was also required to serve an additional 30 days suspension which had earlier been assessed in the form of a deferred suspension. The merits of the 30-day deferred suspension was considered by this Board in Award 18.

After a review of the record, it is the conclusion of the Board that there is substantial evidence to support the charge. It was established at the hearing that there are standing instructions issued in connection with the use of Form Y Train Orders for employees in charge such as the Claimant. The Claimant admitted at the hearing

that he was aware of the rules and that he had received instructions that there would be no working of machinery after a train was cleared in suburban territory. Mr. Perry, Project Engineer, testified he issued verbal instructions to that effect. The instructions concerning Form Y Train Orders were printed in the system timetable and are quoted below in pertinent part:

"Employee in charge will before granting permission to any train or engine, the authority to proceed beyond a red flag being displayed, ascertain that all work and activity has ceased within the territory where the restriction applies and that men and equipment under his jurisdiction are in the clear of the track to be used or while working in a territory of two or more main tracks that all activity has ceased and the men are in the clear."

The rule further requires that:

"Train and engine crews will, if they find men and equipment are not in clear of track to be used or that in two or more track territory activity has not ceased and men and equipment are not in clear, bring their train to a stop, using a regular service application, unless emergency application is warranted . . ." (Emphasis added.)

As we read the rule above it is clear and unambiguous that an employee in charge of men and equipment will make sure that "all work activity" has stopped before a train proceeds through the work area. The Claimant admitted that a speed swing under his direction was operating when the train approached. It is also undisputed that the engineer, in compliance with the rule, brought the train to a stop when he saw the speed swing operate. It is clear based on the facts and his testimony that the Claimant is guilty.

The Organization defended the Claimant by arguing that there was no danger involved as a result of the operation of the speed swing. It was, although adjacent to track, being operated from

a road. They point to testimony of Mr. Perry which recognizes that the equipment would not have fouled the track.

We are not impressed by the Organization's defense. The purpose of the rules is to take every precaution reasonably possible to avoid accidents when trains are moving through areas where track maintenance employees and equipment are working. The Organization is essentially suggesting that the Claimant should not be disciplined because his judgment that the track would not be fouled was correct. The rule's intent, however, is to limit the exercise of such discretion. The fewer discretionary judgments that are necessary in situations such as this the lower the likelihood of accidents occurring. The rule was made in the name of safety and it is reasonable. The Carrier must have the right to enforce reasonable rules especially those that are designed to prevent serious injury or property damage.

Regarding the <sup>~</sup>quantum of discipline, we are mindful of our role. It is our function to determine if the discipline is arbitrary or capricious. It is our opinion that 30 days actual suspension for this offense is not excessive. Therefore, this portion of the claim is denied. However, the discipline in this case activated a 30-day deferred suspension. A portion of the claim is for recovery of loss of wages as a result. The instant decision in respect to this portion of the suspension must be read in context of our decision in Award 18. In that award, we found that the deferred suspension was unjustified. Therefore, it was improper for the Carrier to require the Claimant to serve an actual suspension in connection therewith. It is thereby ordered that the Carrier compensate the Claimant for all wages lost during the period that he was suspended in connection with the activation of the deferred suspension.

AWARD

Claim sustained to the extent indicated in the Opinion. Carrier ordered to comply within 30 days.

Gilman  
GPI Vernon, Chairman

J. D. Crawford  
J. D. Crawford, Carrier Member

H. G. Harper  
H. G. Harper, Employee Member

DATE: March 25, 1982