

PUBLIC LAW BOARD NO. 3530

Award No. 3

Case No. 3

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of C. H. Robertson in protest of his disqualification of section foreman and assistant section foreman and requests pay for all time lost and seniority rights unimpaired.

FINDINGS:

On December 10, 1981, a broken rail in the track at Mile Post N-126.12 was discovered. Claimant applied a "C" clamp to the rail at the point of the break, however, he failed to advise the dispatcher that the track could only be used at restricted speed. Claimant's inaction created a dangerous situation and was a violation of Operating Rules 644 and 649, as well as, FRA Rule 213.121, Paragraph "D".

The claimant was notified to attend a formal investigation, which was held on January 8, 1982. Pursuant to such investigation, claimant was disqualified as Section Foreman and Assistant Section Foreman and accordingly his seniority was terminated.

Based on the testimony adduced at the investigation, including claimant's own admission that he failed to notify the dispatcher

- 2 -

of the speed restriction, there was substantial probative evidence that he was guilty of the charge.

The Carrier's actions were neither arbitrary nor capricious here and there is no basis for setting aside such discipline.

AWARD:

Claim Denied. This Award is a companion case to Award No. 2 and these findings are applicable.

Nicholas Kumar
Neutral Member

J. A. Alletto, Jr.
Carrier Member

Bruce L. Hall,
Organization Member

Date 3/23/84