

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 29

Case No. 29

System Docket No. BMW-D-215

STATEMENT OF CLAIM

Appeal of the discipline of 30 days' suspension and a one-year disqualification as Track Foreman assessed to Foreman Matthew Heffner.

FINDINGS

This dispute concerns the Claimant's involvement in an incident when two locomotives collided with track surfacing equipment which was under the direction of the Claimant. The Claimant had installed blue flag protection of his equipment. The Carrier asserts, however, that the Claimant had improperly installed a portable derail and wedge. The Claimant contended that he had placed the derail to protect his equipment in case it was moved. The Carrier argues that the derail should have been placed to prevent movement of locomotives or cars into the track.

The degree to which the train crew was responsible for the collision is not before this Board for review. As to the Claimant herein, the Board has no basis to find that the Carrier's judgment is incorrect as to the improper placement of the derail and wedge.

The Carrier originally assessed a 35-day suspension, which included five days held in abeyance from an earlier matter. The Claimant stated that he had been advised that the previous five-day penalty would be cleared from his record. Upon review, the Carrier agreed, and the suspension was changed to 30 days.

Since the Carrier found the Claimant at fault, the Carrier may properly review the Claimant's disciplinary record in determining the severity of penalty. This record shows a previous incident involving a collision in which the Claimant was assessed a suspension. In view of this, the Board finds no basis to modify the 30-day suspension assessed in this instance.

As to the one-year disqualification as a Foreman, that period will elapse shortly or has already elapsed by the time this Award is made effective. While this disciplinary measure remains on the Claimant's record, the Board simply notes that the Claimant has completed the one-year period of disqualification.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 10-6-94