

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION – IBT RAIL CONFERENCE
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR**

Case No. 304

STATEMENT OF CLAIM:

Appeal of the discipline imposed upon Mr. Ken Cox on March 4, 2013.

FINDINGS:

By letter dated November 5, 2012, the Claimant was directed to attend a formal investigation on a charge that the Claimant had violated the Carrier's Standards of Excellence and NORAC Operating Rules when he allegedly ran through a misaligned switch while operating a Burro crane on October 25, 2012, resulting in the derailment of a twenty-ton rail cart and causing about \$30,000.00 in equipment and infrastructure damage. The investigation was conducted, after two postponements, on February 19, 2013. By letters dated March 4, 2013, the Claimant was notified that he had been found guilty as charged, and that he was being assessed a ten-day suspension, with five days to be served immediately and five days to be held in abeyance for one year. The Claimant also was required to re-qualify on the NORAC Operating Rules before resuming NORAC duties. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence in the record supports the finding that the Claimant was guilty as

charged, because the Claimant acknowledged that he did run through a misaligned switch that caused a derailment of the equipment under his responsibility, because there is no merit to the Organization's arguments or its attempts to shift responsibility for the incident, and because the discipline imposed was not excessive, but actually was lenient in light of the potential for a passenger train collision. The Organization contends that the instant claim should be sustained in its entirety because the incident was the involved foreman's fault but this foreman was not called to testify, because the tower operator was not disciplined, because the Claimant's actions actually prevented a more serious derail, because the Carrier made an excessive estimate of the damage, because the Carrier failed to provide a true and accurate transcript to the Organization, because the Carrier prejudged the Claimant's guilt, because the Claimant was allowed to perform NORAC duties prior to the issuance of the discipline letter, and because the discipline imposed was too severe, particularly when compared to discipline issued in other similar incidents.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural argument raised by the Organization, and we find it to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to operate a crane in a safe manner and maintain proper control over the equipment. The Claimant's action caused a derailment of equipment that was his responsibility. The Claimant's actions were in violation of Carrier Rule 80, which

requires the employees to control the movement of their equipment and to stop before switches that are not properly aligned for movement. The Claimant stated at the argument that his vision had been obstructed in part. The Claimant did not notice that the signal was misaligned.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case had twenty-nine years of seniority. The Carrier apparently took that lengthy service into consideration when it issued a ten-day suspension but held five of those days in abeyance. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the discipline to the Claimant. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS

Neutral Member



ORGANIZATION MEMBER

DATED:

7/9/14



CARRIER MEMBER

DATED:

7/7/14