

PUBLIC LAW BOARD NO. 2786

Parties Railroad Yardmasters of America  
to and  
Dispute Consolidated Rail Corporation

Statement  
of Claim:

Appeal from discipline of twenty (20) days actual suspension assessed D. W. Perry for the following offense:

Your violation of the 3rd para. of Rule 400N-7, Rules for Conducting Transportation, while assigned as Yardmaster, Lincoln Yard. A crew working under your supervision was instructed to place excessive amount of cars on track No. 13, at approximately 12:35 a.m. on March 8, 1979 and cars were shoved out of the south end of the yard through switch not aligned which resulted in derailment and damage to track and equipment.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated August 13, 1980, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was charged with instructing a Yard Crew under his jurisdiction to shove a number of cars onto a designated track which exceeded the number of cars the track would hold resulting in the shoving of cars out the other end and derailling several cars damaging the track and switch.

Pursuant to a hearing the Claimant was found guilty of the charge of placing an excessive amount of cars on track No. 13 which resulted in the derailment and damage to track and equipment.

The Organization has objected to the wording of the notice issued in that it is alleged to be worded so as to prejudge the Claimant. We do not agree. The wording used in the notice in the instant matter is common in the industry and does not suggest a prejudgment.

The Organization further alleges that the charges in the notice were not specific as required by the Rule. The notice is quite specific and does fall well within the accepted definition of a "precise charge" as used in the industry.

As to the merits in the instant matter, the Organization takes the position that the Carrier failed to substantiate their charges.

We have reviewed the transcript of the investigation and find that the only evidence presented to substantiate the position of the Carrier was that of Assistant Terminal Superintendent, Douglas Greer. Mr. Greer did not witness the derailment and was extremely vague with regard to what happened. Even by the time of the hearing he was not sure what switch had been run through nor was he sure how many cars were on the track at the time the derailment occurred. The Carrier has the burden of proving its case against the Claimant by substantive evidence of probative value. The evidence presented in the instant case does not meet that standard. We will sustain the claim.

AWARD: Claim sustained.

ORDER: Carrier is directed to make this Award within  
thirty (30) days of date of issuance shown below.



G. R. Welsh, Carrier Member



J. C. Thomas, Employee Member



Robert A. Frauden, Neutral Member

Issued at Philadelphia, Pennsylvania, June 30, 1982.