

PUBLIC LAW BOARD NO. 4357

PARTIES United Transportation Union -
TO Yardmasters Department
DISPUTE:
and
Norfolk and Western Railway Company

STATEMENT Claim of regular yardmaster, Richard L. Woods, for two days
OF pay at the yardmaster pro rata rate of pay for attending
CLAIM: investigation held on May 20th and May 28th, 1988 and for ten
(10) subsequent days at the yardmaster pro rata rate of pay for
actually being suspended as a result of that investigation and
request that discipline of the actual suspension and the fifteen
(15) day deferred suspension, as a result of that investigation,
be removed from his service record.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that on April 27th, 1988 Claimant was performing services as a yardmaster at Bellevue, Ohio. His trick was from 3:00 P.M. to 11:00 P.M. that day. The record indicates that at approximately 10:40 P.M. on the night of April 28th, Claimant received notice that there would be nine cars from the Central Soya Bean Plant to be placed in the yard. He informed the yard crew to place the nine cars into Track L 2. At approximately the same time, he instructed the yard clerk to show these nine cars as being located in Track L 3 in the computer. It appeared that this discrepancy resulted in the third trick yardmaster, seeing that it was necessary to make room on Track L 2, checked the computer. Based on the computer, it was safe to shove the track 14 car lengths. He instructed the crew of the hump engine to shove the track 14 lengths.

and as a result, a collision with another train pulling out of the track occurred derailing one auto rack. Based on this incident, Mr. Woods was charged with failure to perform duties properly, in failing to inform yard crew LB 24 to put the nine cars in question in the proper track at the Bowl Classification Yard. At the investigation, Claimant admitted that he had instructed his yard clerk to show the nine cars in question in Track L 3 while instructing the yard crew to place the same cars in L 2. Based on this information, Carrier found Claimant guilty of the charges and assessed him a 15 day deferred suspension.

Petitioner raises a series of procedural issues. First, it is alleged, that the charge in this instance was not precise, as required by the Agreement. An examination of the charge in question, and the conduct of hearing, reveals that the charge was clear and quite sufficient to enable Claimant to defend himself. This allegation is unfounded.

As a second procedural point, Petitioner insists that Claimant was found guilty of a different infraction than that specified in the charge. The letter indicating Claimant's guilt, provided in part, that he was guilty for "for your failure to ensure that the location of cars in the Bowl was consistent with the computer inventory of such cars, you are hereby assessed fifteen (15) days deferred suspension. . . ." The Petitioner, therefore, argues that this finding of guilt was not consistent with the initial charge of his failure to properly instruct the crew to put the cars in the proper track. It is this Board's judgement that Petitioner's argument on this issue is merely a matter of semantics and has no substance. Claimant was found guilty of precisely that charge which he was initially confronted with, even though the language was not identical.

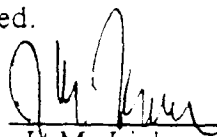
As a final procedural point, the Organization alleges that Claimant was deprived of due process in the course of the conduct of the hearing. It is argued that the hearing officer was prejudiced and prejudged the situation and furthermore refused to permit Claimant to present proper evidence which he desired to be introduced. In addition, it is claimed that the unfair conduct of the hearing officer also included leading witnesses. After a review of the entire transcript of

the proceedings, it must be concluded that while the hearing officer's conduct was far from perfect, but in sum, it did not prejudice the due process rights of Claimant. While the hearing officer did indeed lead witnesses on occasion, there is no question but that the matter of prejudgment and bias was not established by any or the testimony or arguments raised by the organization.

Petitioner alleges, in addition to procedural arguments, that Carrier has not met its burden of proof in this case and has not established the guilt of Claimant. It is difficult to understand this allegation. The Board notes that there is no doubt that the derailment which occurred, was due to an improper number of cars being shown in the computer for Track L 2. Furthermore, the transcript of the investigation reveals, that Claimant readily admits that he instructed the road checker to move the cars from Track L 2 to L 3 on the computer. At the same time, he admitted, that he issued instructions to the yard crew to place the nine cars in Track L 2. Thus, the computer was not consistent with the actual number of cars in the track in question and this was the proximate cause of the derailment. As the Board view it, there is no doubt but that the record supports Carrier's conclusions that Claimant was guilty of the charges. The measure of discipline was not inconsistent with the particular infraction involved here. For those reasons, the Claim must be denied.

AWARD

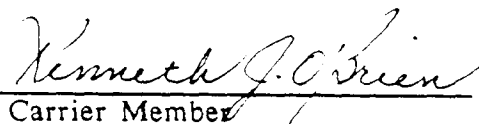
Claim denied.



I. M. Lieberman, Neutral-Chairman



Employee Member
R. C. Arthur



Carrier Member
K. J. O'Brien

Norfolk, Virginia
August 10, 1990