

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13168  
Docket No. 12993  
97-2-95-2-17

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**PARTIES TO DISPUTE:** (International Brotherhood of Firemen and Oilers,  
( AFL-CIO System Council No. 6  
(CSX Transportation, Inc. (former Baltimore and  
( Ohio Railroad Company)

**STATEMENT OF CLAIM:**

“1. That under the current and controlling agreement, Fireman and Oiler F. M. Lohr, ID# 1517405, was unjustly dismissed from service on November 3, 1994 by CSX Plant Manager R. H. Hayes, Jr.

2. That accordingly, Fireman and Oiler F. M. Lohr be restored to his position with CSX Transportation and he be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefit be paid effective November 3, 1994, the payment of 10% interest rate added thereto and his personal record be expunged of any reference to this discipline.”

**FINDINGS:**

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Following an Investigation, the Claimant was notified in pertinent part as follows:

“A review of the transcript does conclude that you were responsible for the derailment of CSXT Locomotive 6410, and damages to the turntable Cumberland Locomotive Shop, Saturday, October 8, 1994.

In view of this incident, and a review of your previous work history in regard to your safety record and past infractions, discipline assessed is dismissal from all services. . . .”

The Claimant, a Hostler Helper, was required in the course of his duties to secure Locomotive 6410 in the field at the Cumberland Locomotive Shop facility. After allegedly doing so, the Claimant and another employee left the area. Upon returning, the Claimant noticed that Locomotive 6410 and attached Locomotive 2313 were rolling toward the turntable pit.

The Claimant was then able to reach the turntable and almost completely adjust it to receive the moving locomotives. As a result, Locomotive 6410 did not fall into the turntable pit. The left front wheel, however, struck the grading on the turntable and the right front wheel was left hanging over the edge of the open pit. The cost of repair, according to the Carrier, was \$287.00. Obviously, if the Claimant had not adjusted the turntable in time, there would have been far greater damage as well as the possibility of injury to employees working in the area.

The accepted procedure for securing a locomotive is to set the handbrakes, secure a chock with metal chain, and set the necessary derail to direct the locomotive if it otherwise starts moving. The Carrier's post-incident Investigation showed, according to testimony, no evidence of the handbrake being set; in addition, no chock was found in the vicinity.

The Claimant testified that he had set the handbrake and properly placed the chock. He admitted, however, that he had failed to set the derail. The Organization suggests the discrepancy between the Claimant's version and that of the Carrier could be explained by the possibility that other employees may have worked on the locomotive while the Claimant was elsewhere and as a result may have released the handbrake.

However, no evidence was offered to indicate any specific employees who might have entered the locomotive cab for this purpose.

The Board cannot resolve with full certainty whether the Claimant applied the handbrake and, if so, whether it may have been released by another employee. What is certain, however, is that the Claimant admitted his failure to set the derail. Had this been done, as it should have been, such action could have modified or eliminated the resulting damage and threat of personal injury.

The Carrier states its disciplinary action to terminate the Claimant was also based on the Claimant's previous disciplinary record. This includes a ten-day suspension assessed seven months previously for failure to perform duties safely. Other previous offenses as to absenteeism do no credit to the Claimant's standing.

This matter may be readily distinguished from Second Division Award 13076, cited by the Organization. Sustaining Award 13076 also concerned an employee's alleged failure to set a handbrake. In that instance, a locomotive rolled into the turntable pit some 13 hours after being attended to by the employee. Award 13076 found "inconclusive" the post-incident test of the handbrake. Most significant, however, is that in the situation resolved by Award 13076 there was no issue of failure to set a derail.

There is clearly good cause for substantial disciplinary action, but the Board finds the penalty of dismissal from service unduly harsh, considering the Claimant's quick action to avoid a far more serious incident and the relatively modest damage actually incurred. On this basis, the Claimant is to be reinstated with seniority unimpaired, but without backpay or retroactive benefits. The record of the incident shall remain on the Claimant's record. However, should the Claimant fail to report for duty within 30 days after notice of reinstatement (unless otherwise extended by mutual agreement of the Carrier and the Organization), the dismissal action shall remain in effect.

### AWARD

Claim sustained in accordance with the Findings.

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**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

**Dated at Chicago, Illinois, this 29th day of October 1997.**