

**Award No. 2811  
Docket No. 2687  
2-CMStP&P-EW-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That P. J. Gresham was unjustly dealt with when he was dismissed from the service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, effective June 26, 1956, to July 26, 1956.

2. That accordingly the Carrier be ordered to:

(a) Reimburse P. J. Gresham for all time lost from and including June 26, 1956, through July 25, 1956, at the Line Foreman's rate of pay;

(b) Restore P. J. Gresham to his former position of Line Foreman; and

(c) Reimburse him for the difference in the rate of pay between the Lineman's rate and the Line Foreman's rate starting July 26, 1956, and continuing until the case is disposed of.

**EMPLOYEES' STATEMENT OF FACTS:** P. J. Gresham, hereinafter referred to as the claimant, was employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, in 1948 as a trolley lineman in the electrified zone on this property. The claimant was assigned as trolley line crew foreman in 1955 with headquarters at Avery, Idaho.

On June 1, 1956, the claimant was involved in a motor car accident in the east end of Avery Yard, in a collision between motor car operated by the claimant and one operated by Section Foreman Marsillo.

However, Line Foreman Gresham operated his motor car in such a manner that it could not be stopped before colliding with another motor car on a 10-degree curve with his view restricted to about 235 feet. He did not maintain a constant lookout ahead as required by the rules, but alleges he was engaged in shifting the motor car from second speed to high speed. Had Line Foreman Gresham used good judgment and postponed the shifting of the speed of his motor car until he had passed the point where the view was obstructed, the accident, undoubtedly, would have been prevented as he would have maintained a constant lookout ahead and traveled at a lower rate of speed as required by Rule 425 quoted above. In answers 220 and 221, the claimant and his representative admitted they had been given a fair and impartial hearing.

The claims are entirely without merit and the carrier urges that the Board so hold.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

This matter concerns the alleged improper assessment of discipline to one P. J. Gresham. The incident involved the collision between two (2) motor cars, one of which was operated by the claimant, the other having been operated by a section foreman.

The accident occurred on June 1, 1956. The investigation was held on June 21, 1956. As the result thereof the claimant was notified that he stood dismissed from the service of the carrier. At the time of this incident claimant was classified as a line foreman. Some thirty (30) days after the imposition of discipline, or July 26, 1956, claimant returned to service as a trolley lineman. Reimbursement is sought for all time lost at line foreman's rate of pay, plus restoration to the classification of line foreman, and restoration of the pay differential of the two classifications.

It is well settled by prior awards of this Division that the Board will not substitute its judgment for that of the carrier, if (1) the investigation rules have been strictly complied with (2) action of the carrier was neither arbitrary or capricious (3) there was substantial evidence of guilt, and (4) the penalty imposed is not excessive or unreasonable.

While there is evidence of record that claimant was not operating the motor car with the very highest degree of care at the time of the accident, there is other evidence of record, amply substantiated by fellow employes, that the section foreman was likewise guilty of gross negligence. On the basis of the record as a whole, coupled with claimant's apparent clear past record, we conclude that there are mitigating and extenuating circumstances present to justify a finding that the penalty imposed was, in the premises, excessive and unreasonable.

As noted above, claimant was restored to service as a trolley lineman. We are of the opinion that because of conflicts in the record his demotion to this classification was sufficient penalty in the premises, and that he should have been recalled to service immediately after the investigation. We are of the further opinion, and so find and hold, that claimant should be reimbursed for all time lost after June 21, 1956, the date of the investigation, and July 26, 1956, the date of his recall, at the trolley lineman's rate of pay, said amount to be less any sums earned by claimant in other employment during said period, together with seniority and other contractual rights unimpaired.

While we are of the further opinion that claimant's usefulness as a line foreman was not impaired, we are cognizant that this question is properly one of management and that the position of line foreman is a position to which we are powerless to order claimant's reinstatement.

#### AWARD

Claims disposed of as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of March, 1958.