

**Award No. 811**  
**Docket No. MW-824**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

William H. Spencer, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO GREAT WESTERN RAILROAD**

**STATEMENT OF CLAIM:** "Claim of H. O. Huffstutter, former section foreman at St. Charles, Ill., dismissed, that he be reinstated into the service as section foreman at St. Charles, Ill., with his seniority rights unimpaired, and paid for time lost."

**EMPLOYES' STATEMENT OF FACTS:** "H. O. Huffstutter was removed from the service as section foreman at St. Charles, Ill., June 21st, 1938, upon receipt of the following letter from Roadmaster H. H. Sukow:

Mr. H. O. Huffstutter,  
St. Charles.

'Stockton 6/21.

You are hereby notified that your services with the C. G. W. R. R. Co. are terminated, effective this P. M. account unsatisfactory work.

H. H. Sukow.'  
Roadmaster.'

"Being thus dismissed, Mr. Huffstutter made request for a hearing in conformity with Schedule rule Article 4, Section B, which hearing was granted at Stockton, Ill., July 6, 1938. Subsequent to that hearing Mr. Huffstutter received the following letter from Division Engineer W. O. Rutherford:

Mr. H. O. Huffstutter,  
St. Charles, Ill.

'Oelwein, July 18, 1938.

As a result of investigation held at Stockton, Ill. on July 6th, you are dismissed as section foreman for failing to properly maintain your track in a workmanlike manner and for allowing unsafe conditions to exist, making no effort to repair or protect by placing order on same.

You will, therefore, turn over all Company property in your possession to the agent at St. Charles.

WOR  
cc-HHS

W. O. Rutherford  
Division Engineer.' "

**POSITION OF EMPLOYEES:** "Here is a man who has served in the Maintenance of Way Department in supervisory capacity for over thirty years, now being dismissed because of unsatisfactory work or incompetency. It is a good deal, as expressed by Huffstutter himself 'I have been in the Maintenance of Way service for 31 years, running section and large gangs, also track supervisor for 14 years, and for the first time I have learned that I was

part of the record. The Board's attention is directed to the questions propounded to Mr. Huffstutter and his answers thereto, which indicate beyond a doubt that his work was far inferior to that required of section foremen.

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"In view of the facts and circumstances set forth in this case, the Carrier contends that the question of removing Mr. Huffstutter from the service was purely a managerial matter as he certainly was given every opportunity to make good. Therefore, the Carrier respectfully requests that the claim of the employee be denied."

**OPINION OF BOARD:** Only a few cases have come before this Division in which it has been asked to remove or modify disciplinary action imposed by a carrier on an employee. In its Award No. 135, the Division said in part:

Although the Board has the power to order the reinstatement of an employee, it should be very cautious in the exercise of the power. It should not exercise it unless the evidence clearly indicates that the employer has acted arbitrarily, without just cause, or in bad faith.

The evidence of record does not justify the Division in disturbing the action taken.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the evidence of record does not furnish the Division any basis upon which to disturb the action complained of.

#### AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1939.