

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the agreement when they removed Charles E. Fowler from his position as Track Inspector;

(2) That Charles E. Fowler be restored to his former position with rights unimpaired and paid for time lost since his dismissal December 9, 1948.

EMPLOYES' STATEMENT OF FACTS: Charles Fowler, Track Inspector, was involved in a collision between the fourth section of Train No. 72 and a motor car. The collision occurred at Betz Siding, November 22, 1948. Investigation in connection therewith was held at Carbondale, Illinois, December 9, 1948.

Under date of January 15, 1949, decision was rendered by Division Engineer Van Arsdalen. The decision rendered removed Fowler from his position as Track Inspector.

Claim was filed with the Carrier, requesting that Fowler be restored to his position as Track Inspector with rights unimpaired, and that he be paid for time lost since his removal from his position.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated September 1, 1934, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Prior to November 25, 1942, the Carrier established a classification of employees in the Maintenance of Way Department, known as Track Inspectors. These positions were filled by employees from the Track Department. The work comprehended in these assignments was work previously performed by Section Foremen and was work of a type customarily recognized as Maintenance of Way work.

On November 25, 1942, the Brotherhood's General Chairman addressed the following letter to Mr. C. M. Chumley, Engineer Maintenance of Way:

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Fowler did not accept the offer to work as a section laborer and in view of rules violated, he will not be reinstated as track inspector.

Yours truly,

(s) C. I. VanArsdalen
Division Engineer"

"Carbondale, Illinois
January 15, 1949

Mr. Charles E. Fowler,
Reevesville, Illinois

Dear Sir:

Supervisor Williamson informed you on November 26, 1948, that you had been removed as track inspector on the Bluford District account your failure to protect motor car in your charge which resulted in accident at Betz at 1:30 P. M., November 22, 1948.

Investigation held in my office December 9, 1948, indicates that Maintenance of Way and Structures Rules No. 96, 97, 99 and 101 were not complied with and for these violations you will not be permitted to operate a motor car for this company in the future. However, as advised by Mr. Williamson, you can return to position as laborer on any section on Supervisor Williamson's territory. You have fifteen (15) days from the date of this letter to return to service as section laborer or you can consider yourself dismissed from the service.

Yours truly,

(s) C. I. VanArsdalen
Division Engineer"

It cannot, therefore, be said that claimant and his representative were not notified of his demotion until thirty-seven days after the investigation. In fact, the Carrier was not required by any schedule rule to conduct an investigation before demoting the track inspector, but in an endeavor to be fair and reasonable, the investigation was held to determine if there were any facts or circumstances present that would change the decision rendered. Nothing was developed in the course of the investigation that warranted a change in the discipline administered. In fact, as it can be seen from the transcript of investigation it would be unfair to the claimant, the railroad and our patrons to permit Mr. Fowler to operate a motor car on a railroad. It would jeopardize the safety of the traveling public, other employees as well as his own safety.

The record conclusively shows the position of track inspector is appointive and not covered by the schedule agreement between this Carrier and the Brotherhood of Maintenance of Way Employees. In the interest of efficiency and safety, the action taken was not only warranted but was necessary, and the Employees' attempt to have the claimant promoted again is not warranted nor supported by the facts in the case, and their claim should be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a track inspector, became involved in a collision on November 22, 1948, near Betz, Illinois, at which time the fourth section of Train 72 ran into and seriously damaged the motor car in his charge. Carrier found that claimant had failed to comply with the rules governing Maintenance of Way and Structures Department employees and demoted him from his position as a track inspector. Claimant requested an investigation which was granted. Carrier failed to render a decision within twenty days from the date of hearing and the Organization asserts this as a violation of Rule 25 (e) of the current Agreement. The Carrier contends that track inspectors are not governed by the discipline rule

(Rule 25) of the Maintenance of Way Agreement and consequently the Organization is in no position to charge a violation on the ground. This issue must first be determined.

The positions classified as track inspectors were established by an agreement under date of January 5, 1945. Prior to the date of this agreement, track inspection work was performed by section foremen or other maintenance of way employees. By the agreement it was mutually agreed to establish a classification of track inspector subject to certain conditions therein set out. One of the conditions was that a track inspector would not accumulate additional seniority in the rank from which promoted as provided by Rule 5 (a). That the Rule 5 (a) mentioned was that contained in the Maintenance of Way Agreement is clear. We are of the opinion that the agreement of January 5, 1945, did not have the effect of removing track inspectors from the scope of the Maintenance of Way Agreement except to the extent that the agreement of January 5, 1945, modified the provisions of the general agreement. The very fact that the agreement was signed by Carrier and the General Chairman, Brotherhood of Maintenance of Way employees, indicates that track inspectors were considered as maintenance of way employees. Consequently the discipline provisions of the Maintenance of Way Agreement (Rule 25) apply to employees classified as track inspectors.

Claimant demanded and was granted a hearing which was concluded on December 9, 1948. On January 15, 1949, Carrier made its decision that claimant was demoted as track inspector and directed him to return to his position as track laborer within fifteen days or consider himself dismissed from the service. The decision having been made more than 20 days after the hearing, Rule 25 (e) was violated. When the Carrier failed to make its decision within the stipulated time, it had the effect of exonerating the claimant on the charge preferred. Awards 2590, 3697, 3736.

In the present case, the claimant was disciplined by removing him from his position as track inspector but reserving to him his right to exercise his seniority rights as a track laborer. He refused to so exercise his seniority which we think he was obligated to do if he desired to preserve his rights under the Maintenance of Way Agreement. Consequently the claim can be sustained only for the difference in his pay as a track inspector and what he would have earned by exercising his seniority rights to a track laborer's position.

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 Agreement was violated.

AWARD

Claim sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.