

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Lloyd H. Bailer, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

(1) The disqualification and demotion of Track Foreman H. Reimers on March 15, 1954, was without just and sufficient cause and in violation of the agreement between the parties to this dispute.

(2) Mr. H. Reimers shall now be reinstated as Track Foreman; his record cleared and all seniority rights restored; and he be reimbursed for the exact monetary loss suffered; account of the violation referred to in part (1) of this claim.

**OPINION OF BOARD:** This dispute arises out of the disqualification and demotion of Track Foreman Herman Reimers for the stated reasons of insubordination and violation of Safety Rule No. 2. The Carrier demoted Claimant to Section Laborer and removed his name from the seniority roster of Track Foremen and Assistant Track Foremen.

On Friday, February 12, 1954, Claimant was engaged in burning right-of-way with Section Laborers Turndahl and Meirose. At about 2:30 P. M., during the course of this activity, Turndahl's pant-leg caught fire, as a result of which he received a burn on one of his legs. Foreman Reimers instructed him to report to Carrier physician for treatment. Turndahl refused to do so, stating he did not think it was necessary, that he would "doctor it up" himself. It appears that Reimers repeated this instruction to Turndahl but without success.

At about 3:20 P. M. that day, during the course of a routine telephone conversation with his immediate superior, Track Supervisor Dickman, Foreman Reimers reported that Turndahl had been injured and had refused to see a physician. The Track Supervisor responded that the Foreman "had better get him there." Claimant then looked for Turndahl in the lunchroom but found he had left. Claimant left duty shortly thereafter. His regular quitting time was 3:30 P. M.

Finding that Turndahl did not report to work the following Monday morning, Foreman Reimers went to his bunk car and asked how he was feeling. Turndahl responded, "Oh, I'm kind of sore in my leg when I

walk on it, it kind of draws and hurts. I won't be out today—no telling when." The Foreman said "Okay" and returned to work. Claimant did not again instruct Turndahl to see the doctor, nor is there any indication that he advised Turndahl of Supervisor Dickman's statement of the previous Friday.

Later the same Monday morning Supervisor Dickman and Roadmaster Lane came by during the course of an inspection trip. They asked the Foreman if Turndahl was working. Upon being advised in the negative they went to the injured employee's bunk car where they learned for the first time that he still had not seen a physician. (Turndahl had attempted to treat himself with salves and bandages.) Claimant Reimers was then instructed to take Turndahl to the hospital, which was done without protest from the injured employee. The latter remained in the hospital 14 days and was not in condition to resume work for a considerable period thereafter. The injury had become complicated by an infection which set in. Following his release by Carrier's medical department Turndahl went on leave of absence pending action on his retirement application. He retired on May 1, 1954 and thus did not return to work after his injury.

On March 2, 1954, two days after Turndahl left the hospital, Claimant Reimers was notified of the following charges: 1) Insubordination, in that he violated Supervisor Dickman's order to see that Turndahl reported for medical treatment for his injury; and 2) Failure "to diligently follow or attempt to follow the provisions of Safety Rule No. 2 by not seeing that Fred O. Turndahl, a track laborer working under your supervision, reported for medical treatment after he was injured." The investigation was held on March 5 and the above-stated discipline was imposed on March 15, 1954.

Rule 21 (paragraph d) of the effective Agreement contemplates that discipline may take the form of demotion. Safety Rule No. 2 provides in pertinent part: "Foreman, or other person in charge, must be notified immediately of any personal injury to an employee on duty, and must see that the injured employee reports for medical treatment."

The defense offered in behalf of Claimant Reimers is that he had already performed his duty by instructing Turndahl to see the doctor in the first instance, by reporting the injury to Supervisor Dickman, and by advising him that Turndahl refused to accept medical treatment. It is asserted that any infraction of the Safety Rules that may have occurred was committed by Turndahl and that Claimant was disciplined for the former's offense.

The record establishes that Claimant failed to exercise all due diligence in carrying out the Supervisor's instructions on the afternoon of March 12. He made only a cursory search for Turndahl and then went home. Supervisor Dickman was entitled to expect that Foreman Reimers would make every reasonable effort to find the injured employee and see that he received medical attention. Claimant knew where Turndahl lived, which was in the vicinity of the work location. While Claimant could not be expected to use physical force to take Turndahl to the hospital, if a renewed order proved fruitless the Foreman would have been obligated to so advise the Supervisor. At the very least, Claimant should have notified the Supervisor that he had not found Turndahl. Claimant's failure to follow any of these courses of action must be regarded as a serious dereliction of duty.

It is even more difficult to understand Claimant's conduct the following Monday morning. At this time he learned that Turndahl still was in pain, that he was not in condition to work, and did not know when he could return to duty. Yet the Foreman took no action, nor did he, even at that late date, report the instructions given by Supervisor Dickman. The injured employee was taken to the hospital only because Supervisor Dickman and Roadmaster Lane happened to come by on an inspection trip and inquired about Turndahl.

Under the facts of this case, we are compelled to conclude that the evidence supports the charges against the Claimant, and that the discipline imposed did not comprise an abuse of the Carrier's discretion.

**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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1957.