

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it suspended and demoted Bridge and Building Foreman Frank Capers without just and sufficient cause, on the basis of unproven charges, and that the discipline assessed was wholly disproportionate to the severity of the alleged offense with which he was charged.

(2) The claimant now be reinstated to the position of Bridge and Building Foreman with seniority, vacation and all other rights unimpaired; the charges be stricken from the record; that he be reimbursed for all wage loss suffered, all in accordance with the provisions of Rule 19 (f) of the Agreement.

OPINION OF BOARD: Claimant had been a Bridge Foreman for Carrier for fifteen years. On January 4, 1962, he was supervising the driving of piling at a bridge. After the first pile had been driven, he instructed two carpenters to saw off the top of the piling; he told them to stop cutting about three quarters of the way through. They did. It is customary to leave about one quarter of the piling to be sawed through after it is secured by a line to the machine which will lift it down. While the sawing was taking place on the first piling, the second was driven on the opposite side of the bridge. Driving of the third began, and the Claimant instructed the same two carpenters to cut the top of the second piling, which they began to do; meanwhile, Claimant supervised the driving of the third piling, and to see better when some steam blocked his view, moved under where he might be hit by the top of the second piling if it fell. It fell, and he was hit and badly injured, being unable even to appear at an investigation of the accident until almost six months later.

At a prior investigation of the same accident, the two carpenters had admitted being negligent in sawing too far through the second piling. Carrier found that they had failed to use good judgment, and requested each to be alert to avoid injuries in the future; no other discipline was imposed on them. After the investigation hearing, attended by Claimant, Carrier

found that Claimant had violated rules, and had been negligent in issuing instructions to his men. Claimant was disciplined by being demoted to Carpenter and by a suspension of thirty calendar days after his return to work.

On the record it appears that there was adequate evidence that Claimant had violated Safety Rule 1067, which enjoins employes to think about a job before starting it and to be alert; while it might be argued that it would be unreasonable to require that he repeat for the cutting off of each piling by the same carpenters his instruction to stop sawing at the three-quarter point, there is no question but that Claimant was not alert when he placed himself in a position where he might be hit by the cut section of the second piling.

There remains the Employes' contention that the discipline was excessive. We will not substitute our judgment for Carrier's in this respect unless Carrier has been arbitrary, or capricious and has abused its discretion in assessing the penalty. Even though Carrier assessed no penalty on the admittedly negligent carpenters for their lack of alertness in connection with the same accident, since a foreman bears the greater responsibility to think through a job and to be alert, we do not agree that the discrimination in penalty was arbitrary or an abuse of discretion. Reasonable men might not all agree that Claimant should have been demoted, in light of the penalty imposed on him by the accident itself; but Carrier's decision to demote him was clearly not arbitrary or capricious; it was one possible course of action which might reasonably be expected to contribute to minimizing the possibility of recurrences of such accidents. But there appears no rational basis for adding a suspension to the demotion. Carrier's answer to this charge in its Ex Parte submission is a general statement that Carrier has the obligation in trying to attain its safety goals "to take whatever action it deems necessary"; Carrier then makes clear the rationale for the demotion, but does not attempt further to make the suspension appear reasonable. It is our conclusion that Carrier acted arbitrarily and abused its discretion in assessing the thirty day suspension. We will sustain the claim to the extent of requiring that Carrier make Claimant whole for wages he lost by reason of the thirty day suspension.

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 Employes involved in this dispute are respectively Carrier and Employes 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 to the extent indicated above in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1965.