



Award Number 17562

Docket Number MW-17983

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 demotion of Mr. John Laubuda from machine operator to laborer was without just and sufficient cause and on the basis of unproven charges. (System File: SLN-39-W-66/Case No. 452)
- (2) Mr. John Laubuda be reinstated to his former position of machine operator (rail saw), with full restoration of his protected status as a machine operator and that he be allowed the difference between what he would have earned as a machine operator and what he earned as a laborer since October 20, 1966.

OPINION OF BOARD: Claimant entered Carrier's service in 1946 as a section laborer and was subsequently promoted to the position of machine operator. As a machine operator Claimant operated various types of rail saws for approximately five years. Carrier contends that as a result of a rash of weld failures on rail welded at Centralia causing safety problems and costly replacements, a highly skilled research engineer was employed to eliminate rail weld failures; that the research engineer concluded that the weld failures were caused by improper fusion of rail ends; and that the causes of the improper fusion were poor quality control at the welding machine and rail cut out of square attributed to poor sawing. Carrier further contends that although Claimant turned out quality work under close supervision, he was unable to meet quality standards of rail cuts when working alone. As a result, Claimant was removed as machine operator and demoted to laborer.

The Organization contends that Claimant was wrongfully demoted for the reason that even after his demotion, he was used by Carrier as No. 1 relief man for the regular saw operator; that Claimant's successor was relieved of any responsibility of making rail cut checks with a square; and that Carrier attempts to place all the blame on squareness without considering temperature and upfeeding pressure as factors in proper forging.

In Award 13179 (Dorsey), the function of this Board was confined, in cases of this nature, to determine whether: (1) Claimant was afforded a fair and impartial hearing; (2) the finding of guilty as charged is supported by substantial evidence; and (3) the discipline imposed is reasonable. The record in this dispute abundantly supports an affirmative finding of all three of the above set out criteria.

This record is absolutely void of any arbitrary or capricious action by Carrier. It is commendable that Carrier expended almost one year working with Claimant in an honest attempt to upgrade his proficiency before instigating the action leading to Claimant's demotion. Claimant's rights were protected at the insistence of Carrier when the investigation hearing was delayed for the purpose of affording Claimant with competent representation.

The Organization failed to rebut the probative evidence of Carrier that Claimant turned out consistent quality work only under close supervision. This evidence presents a strong indication that Claimant's inability to perform this work was the primary cause of the faulty rail cuts; not the improper temperature and upfeeding pressure nor the foundation or mandrell for the saw.

This Board therefore finds that substantial evidence supports the demotion of this Claimant and that the action of Carrier in demoting this Claimant was reasonable under the circumstances.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.