

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19567
Docket Number MW-19819

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Louisville and Nashville Railroad Company

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

(1) The dismissal of Ballast Regulator Operator E. L. Daulton was without just and sufficient cause and on the basis of unproven charges (System File 1-1/D-102705 E-306-2).

(2) Ballast Regulator Operator E. L. Daulton be reinstated with all rights unimpaired and that he be compensated for all wage loss suffered, all in accordance with Rule 27(f).

OPINION OF BOARD: Claimant, prior to his dismissal on September 17, 1971, was employed by Carrier as a ballast regulator machine operator. Following investigation conducted on August 20, 1971, he was dismissed on the ground of gross negligence in the operation of Maintenance of Way equipment on July 21, 1971, resulting in a collision between a ballast regulator and a tamper.

At close of work on July 21, 1971, the tamper and ballast regulator were to be moved a distance of about five miles to tie up for the night. The tamping machine left the work scene first, followed about five minutes later by the ballast regulator machine. The two machines collided on practically level ground, and a five-degree curve, resulting in damage to the tamper estimated by the Carrier at about \$4,000.00.

We have carefully reviewed the transcript of the investigation conducted on August 20, 1971. None of Claimant's substantive procedural rights under the Agreement were violated. The fact that the date of July 22, 1971, instead of July 21, 1971, was inadvertently used in the letter of charge, which error was corrected at the beginning of the investigation, could not properly be used to vitiate the entire proceedings. It is evident that everyone, including the claimant, was familiar with the occurrence that was under investigation. There was substantial evidence in the investigation, including claimant's own statement, in support of the charge. Discipline was warranted.

The Board is concerned, however, with the measure of discipline imposed. Claimant had been in the service of the Carrier about twenty-one years, and as a machine operator for about fifteen years. There is no showing that he was involved in any prior accidents, the only prior discipline being a recorded suspension for leaving his assignment without securing proper permission. In view of his prior record, permanent dismissal was unwarranted. We will award that he be restored to the service with seniority and other rights unimpaired, but without pay for time lost while out of service.

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

That the parties waived oral hearing;

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killam
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.