

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20175
Docket Number m-20241

Joseph Lazar, Referee

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

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

(1) The Carrier acted improperly, arbitrarily, capriciously, without just and sufficient cause and on the basis of unproven charges when it demoted Foreman A. C. Teague and took away his seniority as a Rank 1 Foreman (System File 1-12/D-104425 E-306-18).

(2) Mr. A. C. Teague's seniority as Rank 1 Foreman be restored and unimpaired and that he be allowed the difference between what he would have received as for- (including overtime) and what he was paid in a lower rank position from September 22, 1972 until he is returned to work as a Rank 1 Foreman.

OPINION OF BOARD: Grievant A. C. Teague was employed by the Carrier on October 3, 1928, and held seniority as Rank 1 Foreman from October 22, 1946 until demoted on September 22, 1972, having accumulated some 26 years as Rank 1 Foreman, and 44 years as an employee with the Carrier. The demotion of Grievant is in issue.

On the morning of September 22, 1972, track foreman Teague had received instructions to pull a low spot in the main track just north of a road crossing at Crofton, Kentucky. After Grievant and his three-man crew had completed this assignment and departed, the Assistant Division Engineer and Assistant Roadmaster were at the location, as was also the Assistant Roadmaster who instructed Grievant, and they noticed a hump in the main track where Grievant had worked. Immediately, it was decided to have a 25 MPH slow order placed on the track, and after further examination it was decided to have a 10 MPH slow order placed. A rail gang was used that afternoon to correct the section of track. Although there may be some question about exactly how high the surface of the track had been raised--whether 1" as stated by Grievant or 4-3/4" as stated by the Assistant Engineer and by the Assistant Roadmaster--and there is some related question as to the manner of measurement, there is no question that a problem existed concerning the hump and the runoff, especially since the record shows that there were ties left swinging. There is substantial evidence in the record to support the Carrier's charges against Grievant.

In view of **Grievant's** life-time of service **with** the Carrier, of some 44 years, demotion is not easy to bear, and it is contended that this is excessive punishment. The Carrier points out, however, that "this was the third incident in which he was guilty of making an improper runoff, the first two of which resulted in derailment of a train." In the light of the circumstances in this particular case, the Board will not substitute its judgment for that of the Carrier.

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 **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:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of **March 1974.**