

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21071  
Docket Number Xi-21064

Frederick R. Blackwell, 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 demotion of Track Foreman D. F. Martin and his disqualification for work in Ranks 1 and 2 was without just and proper cause, was an abuse of justice and discretion and in violation of the Agreement (System File 1-12/D-105155 E-306-18).

(2) Mr. D. F. Martin now be reinstated and paid at the foreman's rate for all straight-time and overtime worked by Timbering Gang go. 150 from 12:00 B on October 31, 1973 until he is reinstated as foreman with his Ranks 1 and 2 seniority.

**OPINION OF BOARD:** On October 31, 1973, the Claimant was scheduled to begin service at 7:00 A.M. on his regular assignment as the Foreman of Timbering Gang Bo. 150. Because of an alleged auto accident which occurred in circumstances that prevented him from phoning his supervisor, the Claimant was delayed in reaching work and his supervisor had no knowledge of when he would arrive. He reported for duty at about 12:00 noon, at which time he was verbally relieved of his foreman's duties and informed that he could exercise his seniority in another capacity. The following day he received a letter which read as follows:

"You have failed to properly protect and carry out the duties and responsibilities required of a foreman and as a result you are disqualified for work in Rank 1 and 2.

you may place yourself in lower rank as your seniority will permit."

Following investigation, the Claimant's demotion from the foreman's position was confirmed by a letter from the Division Engineer.

The Employees' appeal raises a procedural issue which is supported by the record and thus the merits of this dispute will not be reached. The procedural issue is based on the Employees' contention that the discipline must be vacated because the Carrier failed to comply with Rule 25(a) which reads as follows:

"**Employees in higher ranks** who become **disqualified** for work **in the higher ranks** may be demoted to lower rank. Such action shall not be taken, however, until charges have been preferred against the employe, and, if he so desires, a hearing granted in accordance with Rule 27(b). If the **employe** feels **unjustly treated**, he shall have the right to **appeal his case** in accordance with Rule 27(e)." (Underline added)

The **Carrier** does not dispute that the **Claimant** was demoted without charges having been preferred and before he had a hearing opportunity. However, the **Carrier** asserts that the demotion was a **disciplinary measure** governed by Rule 27 (Discipline and Investigation) and that, **since** the **Claimant's** lack of qualifications was not the reason for the demotion, the **provisions** of Rule 25(a) are not applicable.

Rule 25(a) refers to "**employees... who become disqualified** for work in the higher ranks," and provides that such **employees** may be demoted to lower ranks. The rule goes on to state that, as a condition precedent to **demotion**, charges must be preferred and a hearing opportunity **afforded**. In terms of who is covered by the rule, the definitional term in the rule is "**employees... who become disqualified**." This term gives no indication that, because of differing **reasons for demotions**, some demoted employees are covered by the rule while others are not; instead, the terms on its face clearly indicate that the rule **encompasses** any disqualification and demotion without regard to the reason therefor. Since the **disciplinary** purpose for the **demotion** in this case does not render Rule 25(a) inapplicable to the demotion, it **must be concluded** that the **Carrier's** action violated that rule and the **Employee's** position is supported by the record and the rule. **Accordingly**, the claim will be sustained to the extent that the **Carrier** shall pay the **Claimant** the difference between the rate of his lower rank of service and the rate of the **foreman's** position for the period beginning on the date of his demotion and ending on the date of his restoration to the rank of foreman.

**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

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That the **Agreement was** violated.

A W A R D

**Claim sustained as** per **Opinion.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **Third** Division

ATTEST: *A. W. Pauls*  
Executive secretary

Dated at **Chicago**, Illinois, **this** 19th day of May 1976.