

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21619  
Docket. Number MW-21529

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**  
(The Akron, Canton & Youngstown Railroad Company

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

(1) The suspension of **Ballast** Regulator Operator P. A. Stover  
for thirty (30) **calendar** days was without just and sufficient cause and  
on the basis of unproven charges.

(2) The Agreement **and practice** thereunder was violated when the  
General Chairman was not furnished **with** a copy of the investigation notice.

(3) The claimant **shall** now be accorded the benefits prescribed in  
Agreement Rule **21**.

OPINION OF BOARD: Claimant P. A. Stover was regularly assigned as **Ballast**  
**Regulator Operator** when on **July 11, 1974**, Ballast  
Regulator No. 227 **became** inoperable because of **transmission** failure.  
Claimant was charged **with** violation of General Rule B, Rule 427 and Rule  
**448**. By letter of August 12, **1974**, **claimant** was advised that the evidence  
presented at the investigation revealed that the machine became inoperable  
due to lack of lubrication. Said lubrication was claimant's responsibility.  
Resulting from this determination was the following discipline: disqualifi-  
cation as a machine operator and thirty (30) days suspension from duty  
(July 22, **1974** - August **21**, 1974).

The evidence deduced at the hearing was circumstantial which  
resulted in said demotion and suspension. This Board recognizes the  
claimant's responsibility for his machine and that the circumstantial  
evidence is justification for the demotion of the claimant. The  
Carrier's action was a means of removing an employee from that position  
who **was** incapable of servicing his machine. This Board also recognizes  
that to further penalize said employee by a punitive thirty (30) day  
suspension cannot be supported by the record, that is, the record does  
not support the fact that the employee knowingly neglected his responsi-  
bility and thus should receive a punitive discipline. **On** this record,  
we find that the discipline assessed is excessive. Accordingly, we will  
set aside the thirty (30) day suspension.

**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 discipline be reduced.

A W A R D

The claim is sustained to the extent provided in this opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.

