

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: disqualification 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 responsibility 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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulos
Executive Secretary

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

