

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21901
Docket Number MW-21970

Joseph A. Sickles, Referee

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

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

(1) The Carrier acted without just and sufficient cause when Mr. D. W. Starkey was 'stripped of all seniority above Bank 6' /System File 1-j (58)/D-106300; 2-306-g.

(2) The seniority which D. W. Starkey held in all ranks above Rank 6 shall be restored as it existed on and prior to November 6, 1975.

OPINION OF BOARD: Claimant was notified, on August 7, 1975, of a charge of responsibility in connection with a collision between an Engine and a Tamper.

Subsequent to an investigation, he was "...immediately stripped of all seniority above Bank 6."

The Employees stress that Claimant was not familiar with the territory in which he was working and that the Tamper operator had only received a minimum of training on the particular Tamper. Accordingly - they argue - there was no justification in removing seniority as an Assistant Foreman (Bank 2), Machine Operator (Ranks 3 and 4) or Lamp Tender, etc. (Bank 5).

On the day in question, Claimant was working as a Relief Foreman. The Claimant knew that Engine No. 4104 was in the immediate vicinity and there had been communication between Claimant and the train, but there was, obviously, a misunderstanding concerning coordination of movements.

Our review of the record leads us to conclude that Claimant may not avoid some degree of responsibility in the matter. For example, proper flagging methods were not employed, an emergency switch was not applied, etc.

While we are fully cognizant that it is not our function to substitute our judgment for that of a Carrier, at the same time, we recognize that we may lessen a disciplinary action which is excessive.

To be sure, Claimant's actions fully justify a determination which will preclude his functioning as a Foreman in Rank No. 1, but we will restore his seniority in Grades 2, 3, 4 and 5.

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 was excessive.

A W A R D

Claim sustained to the extent stated in the Opinion of Board above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.

