

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22250
Docket Number MW-22259

Nathan Lipson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The disciplinary demotion of Equipment Operator T. H. Music, Jr., his disqualification as equipment operator and the suspension of ten (10) days imposed upon him was excessive and unwarranted (System File C-TC-297/MG-1636).

(2) Mr. T. H. Music, Jr. be reinstated as an equipment operator with seniority as such unimpaired, his record be cleared, he be paid for all time lost and be paid the difference between what he was paid at the trackman's rate and what he should have been paid at the equipment operator's rate beginning with the effective date of his suspension."

OPINION OF BOARD: Claimant T. H. Music, Jr., Equipment Operator, assigned to and operating Ditcher D-35, on June 28, 1976, failed to lower ditcher boom for safe passage through a tunnel at work location, resulting in damage to the ditcher. At investigation held to determine facts relating to the accident, Claimant admitted responsibility in his failure to properly lower the ditcher boom for safe passage on the return trip through the tunnel when additional track time was granted to permit unloading of material. Carrier assessed discipline of suspension of ten (10) days and disqualified Claimant as Equipment Operator.

The record does not support a conclusion that Claimant exhibited a deliberate disregard for safety or that his conduct constituted gross negligence. In short, we feel that there are mitigating circumstances present. It is the finding of this Board that the discipline assessed in this case has now served its purpose and that Claimant should be reinstated as an Equipment Operator with seniority and all other rights unimpaired, but without compensation for wages lost as a result of the disqualification.

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 indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1978.

