

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22536  
Docket Number MW-22392

Kay McMurray, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(The Western Pacific Railroad Company

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

(1) The **demotion** of Track **Foreman** T. Valdez and the reprimand placed on the personal record of Track Laborer Hisidro Palafox were without just or sufficient cause (System File B-Case No. 11007-1977-BMWE Local Case No. 204).

(2) Claimant Valdez shall be reinstated to his position as track foreman, his record cleared of the charge and he be allowed the difference between what he was paid as a track laborer and what he would have been paid at the track foreman's rate of pay if he had not **been** unjustly demoted.

(3) The letter of reprimand placed on **Claimant** Palafox's record be removed."

OPINION OF BOARD: On January 28, 1977, the Claimants were engaged in coupling a truck and trailer. Foreman **Valdez** was backing the truck to the tongue of the trailer and upon a signal from Claimant Palafox he stopped. **Claimant** Palafox attempted to attach the trailer **but** in so doing he injured the index finger on his left hand.

In testimony at the appropriate investigation it developed that, according to Palafox, "he didn't know what happened. The truck jumped back and caught his finger after it stopped." The Foreman testified that when he stopped the truck he turned off the ignition key and intended to get out to help couple the trailer. However, this particular engine had a habit of continuing to fire or diesel after the ignition was turned off. He released the clutch before the engine stopped running, which caused the movement of the truck and consequent injury to Palafox. Claimant further testified that he had given no **instructions** to the **man** under his **supervision** with respect to a safe and proper manner to perform the operation. It is

obvious from the foregoing that the actions of the For- contributed to this incident which might have been more severe. Claimant Palafox testified that he had been instructed by other officials about care **in** doing his job, about where his hands should be placed in various activities, and the importance of being careful to avoid injury. Apparently, there was a short lapse of awareness at this particular time.

**Among** railroad men, there must be a constant awareness of the utmost necessity to conduct themselves and the operation with a **maximum** degree of safety. The reasons are so obvious **and well-** understood that they need not be elaborated upon in this award.

In the case under adjudication, the Carrier was within its rights to take some form of disciplinary action to help assure the utmost consciousness with respect to matters affecting the safety of persons and the operation. However, it is our judgment that permanent demotion constitutes an excessive penalty for the negligence illustrated **in this case.**

**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.

**That the discipline to Claimant** Valdez was excessive and the Agreement **was** not violated **as** to Claimant Palafox.

**A W A R D**

Claimant Valdez shall be restored to his former **rank of** Foreman without pay adjustment for the period of his demotion.

The claim of Mr. Palafox is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**

By Order of Third Division

ATTEST:

  
**Executive Secretary**

Dated at Chicago, Illinois, this 28th day of September 1979.