

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22594
Docket **Number** MW-22518

George S. **Roukis**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Baltimore and Ohio Railroad Company

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

(1) The discipline (demotion) of Track Inspector **James R. Gartner** was excessive and unwarranted (System File **NEW-1027/2-MG-1837**).

(2) The Carrier shall return Claimant Gartner to the position of Track Inspector and shall reimburse him for any monetary loss incurred, all in conformance with Agreement **Rule 48(e)**."

OPINION OF BOARD: Claimant was charged with violating Engineering Department Maintenance Rules 84 and 208 while conducting track inspections between the hours of **10:29** A.M. and **12:17** P.M. on January 13, 1977.

An investigative hearing was held **on January 28, 1977**, wherein it was determined that he failed to issue two (2) slow orders in timely fashion and was demoted from track inspector to whatever position his seniority status entitled him, effective February 7, 1977. This disposition is now before us.

In defense of his position, claimant argues that the discipline imposed was **excessive** since he was not provided with the training accorded to **other employees in** "like" positions and, in fact, had reported the condition on at least ten occasions prior to January 13, 1977. He seeks position **reinstatement** and **compensatory reimbursement** for all **time** lost since his demotion.

On the other hand, Carrier **contends that** the training sessions were **not** intended or designed to qualify inspectors and did not affect claimant's perceptions and actions on January 13, 1977. Instead it argues that the record amply demonstrates that **claimant** didn't contact the train dispatcher regarding slow orders for location of Mile Posts **105-12** and **110-30** until **2:50** P.M., although he passed these points at

approximately **10:35** A.M. and **11:15** A.M. respectively. It notes that claimant acknowledged his familiarity with **Rules** 84 and 208 and **was** mindful of the course of action that he should have pursued **when** confronted with a No. 1 track defect. It avers that the discipline administered was proper and commensurate with the gravity of the offense.

In **our** review of the case, we agree with Carrier that training or the lack of it was not the factor responsible for claimant's dereliction in this instance. **He was** familiar with the applicable Engineering Department **Rules** and had observed them before. More importantly, the record shows that he admitted finding bad track at the aforesaid locations and did not place the slow orders in **timely** fashion, pursuant to these requirements, even though he could have made them.

This Board has previously stated that failure to place slow orders on tracks deemed unsafe for train passage warranted dismissal. The fact patterns in this case are not conceptually dissimilar from Third Division Award 14573, where this Division held in pertinent part that,

"**One** of Crawford's prime duties was to place **slow orders** on track to insure the safety of train passage. The absence of an accident on the days **in** question cannot excuse his dereliction."

This decisional principle is on point with the fact developments herein. Claimant was **responsible** for promptly issuing the two (2) slow orders and the fact that a derailment or accident did not occur was not mitigative. While **we are** thus compelled by the record to deny the instant claim, we hope that Carrier will provide claimant the opportunity to ascend to this position again, if the occasion arises.

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;

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That this Division of the Adjustment Board has jurisdiction
over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of October **1979**.
