

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23848
Docket Number MW-23817

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Illinois Terminal Railroad Company

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

(1) The thirty (30) day suspension imposed upon and the disciplinary demotion of Track Foreman D. L. Jordan for alleged 'failure to have a correct "T" Order while tamping at Milepost 119.2' was without just and sufficient cause (System File ITTR 1980-25).

(2) The disciplinary demotion shall be rescinded, with seniority as track foreman restored, and the claimant shall be extended all other benefits of Rule 23 A (d)."

OPINION OF BOARD: On the afternoon of May 9, 1980, a tamping gang led by Claimant, a Track Foreman, was working at milepost 119 on the Carrier's main line north of Kenney, Illinois. Claimant's T Order for that date covered the main line track from milepost 112.3 through milepost 122.7. While making a routine inspection, Roadmaster Hilligoss and Track Inspector Brewer observed that Claimant's crew had placed warning flags along the track south of Kenney. Northbound trains operating from Springfield on the Illinois Central Gulf right of way which switch onto the Carrier's main line at milepost 115.7 (at the Kenney junction) would not see the warning flags before encountering Claimant's gang and the tamping machinery at milepost 119. Previously, on April 25, 1980, Chief Engineer Beirne had expressly instructed Claimant how to properly place his flags so that northbound trains from Springfield would be forewarned of the presence of Claimant's gang. The Chief Engineer told Claimant it was imperative that he set a red flag north of the Kenney junction whenever the gang was tamping north of Kenney.

The Carrier held Claimant out of service on May 9, 1980 and, as the result of an investigation held on May 13, 1980, Claimant was suspended for a total of thirty days and was permanently demoted from track foreman to section laborer. The Organization contends Claimant properly placed his flags at the start of the area covered by his T Order for May 9, 1980. Claimant testified it was not necessary for him to place flags north of the Kenney junction since any northbound train (from Springfield) entering the main line at Kenney would be required to stop and contact Claimant before proceeding since the operating crew would have knowledge of the T Order. The Organization alternatively argues that even if Claimant improperly placed his flags, the discipline was arbitrary and excessive. On the other hand, the Carrier urges us to sustain the discipline because the Claimant, by failing to follow the Chief Engineer's instructions, endangered the safety of his gang and railroad equipment.

The Carrier presented substantial evidence that Claimant flagrantly disobeyed the express instructions of the Chief Engineer as well as Carrier operating rules and, thus, he did not adequately protect the men and equipment under his authority on May 9, 1980. Claimant, at the hearing, acknowledge that the Chief Engineer directed him to place a red flag north of the Kenney junction. Claimant's contention that the flag was not necessary since a northbound train would have to stop after coming within the T Order at Kenney is a lame excuse. The flags provide the tamping gang with an added safeguard should other precautionary measures break down. Claimant was obligated to strictly adhere to the April 25, 1980 instructions and was prohibited from relying on his personal judgment regarding the placement of his flags. Third Division Award No. 19560 (Lieberman).

Claimant's violation of the operating rules which jeopardized the safety of his crew justifies disciplinary action. However, the penalty imposed on Claimant was both excessive and unduly harsh for two reasons. First, while we recognize that demotion is a reasonable method of discipline, there was no rational basis for suspending Claimant when the Carrier was simultaneously levying the very severe penalty of demotion. Third Division Award No. 13854 (House). Under the circumstances, the Carrier could reasonably exercise its discretion to take Claimant out of service on May 9, 1980 but there was no justification for holding him out of work after May 21, 1980 (which was the effective date of his demotion). Thus, Claimant is entitled to back wages at the rate of pay for a section laborer for the period from May 21, 1980 to June 8, 1980. Second, the record is vague as to whether or not Claimant is forever barred from bidding for a promotion. To the extent that his demotion to section laborer was permanent, it should be modified. As of the date of our award and thereafter, Claimant may apply for any available promotion (assuming he meets other eligibility requirements) and the demotion should no longer preclude him from moving to a higher classification. The discipline of demotion has served its purpose and Claimant should now be aware of his inviolate obligation to obey all operating and safety rules. Third Division Award No. 22975 (Lowry).

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 Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: . Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.