

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23951
Docket Number m-24100

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Apprentice Foreman V. D. Thompson for alleged improper protection of contractor's equipment was without just and sufficient cause and wholly disproportionate to such a charge (Carrier's File 12-39 (80-7) H).

(2) Apprentice Foreman Thaspson shall be reinstated with seniority and all other rights unimpaired and shall be compensated for all wage loss suffered."

OPINION OF BOARD: On October 5, 1979, the Claimant was directed to attend a hearing in connection with his alleged improper protection of the contractor's equipment which was working on the main track of the Wilmington subdivision in milepost SE 339.8 on Friday, September 28, 1979. Further, as part of this notice he was charged with violating portions of rule 99 and 754 of the Carrier's operating rules effective December 4, 1978. Rule 754 and Rule 99 are both very long rules and somewhat complicated, however, their meaning and importance are quite clear. In summary, Rule 754 states that all on-track equipment must be afforded flag protection in both directions in accordance with Rule 99 unless moving under the authority of a written line-up. Rule 99 details how that flag protection must be provided.

Certain facts are not in dispute. On the date in question, the Claimant was assigned to protect the movement of a lime injector truck which was working on the Carrier's right-of-way. The Claimant was assigned to protect the truck from train movements from a westerly direction. It is also undisputed that at approximately 4:45 p.m. a work train designated as Work Extra 949 which had been unloading company material while moving in an eastward direction came up upon the lime injector truck which was on the tracks. The transcript makes clear that the Work Extra came upon the lime injector truck as a result of no flag protection being provided.

In reviewing the transcript, it is the Board's conclusion that there is substantial evidence to support the Carrier's finding of guilt. The transcript contains testimony of witnesses as well as implicit and explicit admissions by the Claimant that he failed to fulfill his responsibilities under Rule 99 and 754. Evidence is clear that the line-up provided the Claimant expired at 2:00 p.m. and that between 2:00 and 2:30 p.m. the Claimant left his designated flagging position to obtain a new line-up. He made certain unwarranted assumptions regarding the position of the Work Extra that were not listed on the line-up. Regarding Rule 99, it is clear that the Claimant did

not flag the Work **Extra** and that he was not **physically** in a position **to** do so. Nor did he put out **torpedos** as required by the Rules.

The Carrier **argues** that the offense is extremely serious as the Claimant's negligence could have easily **led** to an accident **with** serious **injury** to **employees** a&r equipment. The Organization **argues, assuming arguendo** that the Claimant is **guilty**, that **permanent** dismissal is **excessive**, capricious and **unwarranted**. In reviewing the past record of the Claimant, we note that he has **approximately nine years** seniority, free of **any disciplinary suspensions**. We also agree **with** the Carrier that the offense **is** serious and that such **negligence** should not be tolerated by **employees** aspiring to hold positions of responsibility, such as foreman, as was the Claimant. **However, we are not convinced that the charge justifies total and permanent severance of the Claimant's employment relationship with the Company in all capacities. Therefore, we direct that the Claimant be reinstated without back pay to the position of Trackman without Apprentice Foreman rights.**

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.

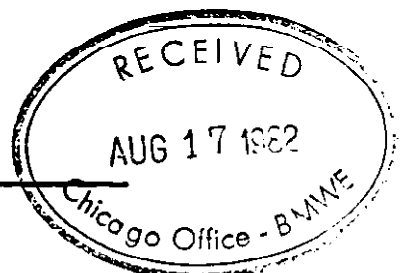
A W A R D

Claim sustained 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 14th day of July 1982.