

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24558
Docket Number MW-24606

William S. Coleman, Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

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

(1) The disciplinary demotion of Track Foreman H. L. Swinney as track foreman and assistant track foreman was excessive, without just and proper cause, was **an** abuse of justice and discretion and in violation of the Agreement (Carrier's File 013.31-250).

(2) Mr. H. L. Swinney's seniority as track foreman and assistant track foreman be restored and unimpaired, he be allowed the difference between what he would have received at the track foreman's rate and what he was paid as a machine operator and he shall be reimbursed for all mileage expense incurred operating his personal automobile between Shreveport and Sandra, Louisiana from April 23, 1981 until he is returned to work as a track foreman with seniority as such unimpaired."

OPINION OF BOARD: Claimant was a Foreman assigned to Section 055 **Deramus** Yard. Claimant was disqualified as a Foreman, as a result of an investigation held on February 23, 1981, for failure to timely submit Daily Work Reports and Form 422-R Derailment Reports. The Carrier contends that despite many attempts over a period of several years to get the Claimant to prepare and submit required Company reports the Claimant ignored the Carrier's efforts and warnings and failed to comply as directed.

The Organization argues that the discipline of loss of wages and seniority, resulting from the Carrier's disqualifications of the claimant as Foreman, was unjust and that the Carrier has failed to prove guilt.

The Organization further contends that Claimant **"was** instructed" to give his reports to the Roadmaster rather than mail them to the Comptroller, and that often Claimant was prevented from timely completion of his reports due to circumstances beyond his control, as **employes** under his supervision were frequently separated from his gang and utilized on different gangs in different areas of **Deramus** Yard.

After a careful review of the record there is no doubt that the Carrier had repeatedly directed Claimant to prepare and timely submit the mandatory reports required.

However, in view of the Claimant's long **service** with the Carrier, the Board is moved to allow Claimant one more chance to comply with the Carrier's regulations. It should be noted that the action of the Board is on **"a last chance basis"**. Accordingly, Claimant's seniority as Track Foreman and Assistant Track Foreman shall be restored unimpaired.

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

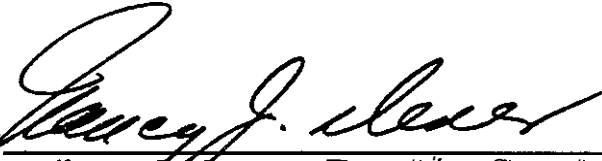
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1983.

