

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24976
Docket Number MW-25195

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The disciplinary demotion of Track Foreman E. J. Baggett and his disqualification as track foreman, assistant track foreman and apprentice track foreman for alleged "violation of Rules 801 and M530" was arbitrary, unwarranted and on the basis of unproven charges (System File MW-82-152/355-31-A).

(2) Mr. E. J. Baggett's seniority as track foreman, assistant track foreman and apprentice foreman be restored and unimpaired, he shall be allowed the difference between what he would have received at the track foreman's rate and what he was paid as a laborer and he shall be allowed mileage (150 miles @ 23¢ per mile) for each work day from June 3, 1982 until he is returned to work as a track foreman with seniority as such unimpaired.

OPINION OF BOARD: In this dispute Claimant was demoted from the position of Foreman, Assistant Foreman and Apprentice Foreman, effective, June 3, 1982. Carrier charged that he violated Rules 801 and M 530 of the General Rules and Regulations for the Maintenance of Way and Structures when it discovered at about 4:25 P.M. on June 1, 1982 at Milepost 120.90 on the main line that the spur switch had been locked and lined with private lock for the spur instead of the main line as required. An unjust hearing was held on July 7, 1982 at the request of Claimant in accordance with Article 14, Section B of the collective agreement, and he was found guilty of the cited rule violations. These rules are referenced in part hereinafter:

"Rule 801

Employees will not be retained in the service who are careless of the safety of themselves or others."

"Rule M 530

Track Foreman

They are in charge of and are responsible for the safe conditions of the tracks, roadway and right of way where they are assigned to work, and for the safe, proper and economical use of labor and material in the maintenance thereof."

In defense of his petition Claimant argues that he had fulfilled his foreman's obligations since he had instructed Laborer Driver M. T. Wilson to line and lock the switches. He asserts that Mr. Wilson complied with these instructions and competently performed the required tasks.

Laborer Driver Wilson testified at the unjust hearing that he routinely lined and locked the main switches and this perfunctory chore was recognized as his responsibility. He testified that he had previously been instructed by Claimant to line and lock the main switches on June 1, 1982 and averred that he properly implemented these instructions.

Carrier contends that Claimant was guilty of the aforesaid rule violations since he was singularly responsible for insuring that all switches were lined and locked for the main line and secured with a spike. It pointedly notes that Claimant explicitly admitted at the unjust hearing that it was his responsibility to insure that employees carry out assigned instructions, and further observes that he had not checked to verify that Laborer Driver Wilson lined and locked the switches properly on June 1, 1982. Carrier asserts that in view of this admission and Claimant's past disciplinary record, his demotion was neither unreasonable nor abusive, particularly when the potential for unsafe rail operations existed.

In our review of this case, we agree with Carrier that Claimant violated the cited rules. Careful reading of the hearing transcript convinces us that Claimant was responsible for monitoring the assigned work activities of Laborer Driver Wilson and the assigned duties herein were no exception. We find no extenuating rationale such as Claimant intimates that it was possible for someone else to disturb the switch between 2:45 P.M. and 4:20 P.M., the time following the completion of this assignment by Mr. Wilson or any other credible evidence that would implicitly waive Claimant's supervisory responsibilities. This line of argument is self serving speculation and unsupported by record evidence. It was Claimant's responsibility to see that the switches were lined and locked for the main line and secured with a spike, but he did not perform this important oversight task. In fact, it was not until approximately 4:25 P.M. when Carman Richard Benoit found the switch lined for the spur and against the main line that this serious mistake was corrected. Claimant was conversing with Carman Benoit at this time and realized the import of the improper switching. He promptly unlocked the switch and then locked and lined it for the main line to enable the West Bound Train to proceed safely into Lufkin Yard. By any reasonable standard of performance measurement, his supervision was unacceptable on June 1, 1982 and his sum total actions constitute a clear violation of Rules 801 and M 530.

While we are hesitant to modify Carrier's disciplinary penalty, especially where a serious violation is present, we recognize that the initial switching mistake was made by another employee. Of course, this does not excuse Claimant's lack of diligence, but a proper balancing of the equities must be considered if we are to insure that prescribed discipline comports with the nature of the offense. We will restore Claimant's seniority to the aforesaid positions, but we will not award any compensation for the time he was demoted. The loss in compensation is sufficient punishment for the rule violations herein. His claim for compensation is rejected.

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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

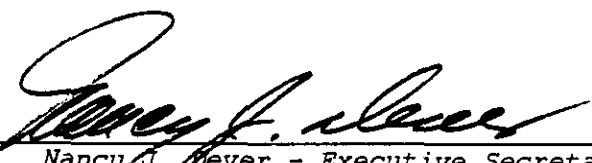
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1984.