

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24980
Docket Number MW-24749

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation

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

(1) The disciplinary demotion of Machine Operator R. J. Lenahan for alleged failure to "check the oil level in the cross slotter ... for three (3) consecutive days, namely, April 29, 30 and May 1, 1980" was without just and sufficient cause and on the basis of unproven charges (System Docket 588).

(2) Mr. R. J. Lenahan's seniority as a machine operator be restored and unimpaired and he be allowed the difference between what he would have received at the machine operator's rate and what he was paid in a lower rated position from May 1, 1980 until he is returned to work as a machine operator.

OPINION OF BOARD: Claimant R. J. Lenahan, a Machine Operator with the Carrier since September, 1974, was served with a notice of investigation in connection with "Your negligence and failure to check the oil level in the cross slotter, for which you are solely responsible for as Machine Operator, for three (3) consecutive days, namely, April 29, 30 and May 1, 1980, resulting in the engine being totally destroyed." The investigation was held on May 14, 1980. Claimant had been disqualified on May 1st as a Machine Operator, and subsequent to the hearing the Carrier determined that the disqualification would remain in effect.

A review of the record before this Board establishes that there was sufficient basis for the Carrier to conclude that Claimant had been negligent with respect to the maintenance of the equipment he was operating, and that there was substantial evidence to sustain the Carrier's decision to discipline him for this infraction. However, the indefinite disqualification is too severe a penalty in the Board's opinion, and the disqualification should be removed as of the date of this Award.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Devel - Executive Secretary

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