

4778

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25012
Docket Number MW-24982

'Hymn Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Colorado and Southern Railway Company

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

(1) The disciplinary demotion of Foreman D. W. **Bowser** as section foreman was without just and proper cause and was an abuse of justice and discretion by the Carrier (System File **C-35-81/G-90 MW**).

(2) Mr. D. W. **Bowser's** seniority as section foreman be restored and unimpaired and he shall be allowed the difference **between** what he would have received at the section foreman's rate and what he was paid at the section laborer's rate until he is returned to work as a section foreman with seniority as such **unimpaired."**

OPINION OF BOARD: As a result of an investigation which was held on August 31, 1981, the Claimant was demoted from the position of foreman to laborer because he was found responsible for the improper track conditions resulting in the derailment of Train 142 at Boulder, Colorado on August 21, 1981.

On August 21, 1981, the Claimant was in charge of a two-man crew that was engaged in replacing head blocks (ties). The record discloses that in replacing the head blocks ties, the Claimant was derelict in not replacing the switch point protector back on the switch point to provide full support and to brace the stock rail. This allowed the **stock** rail to move outward as the train passed over that spot, spreading the rail and **causing** the flange of the wheels to go between the switch point and the **stock** rail. The Claimant, who had one and one-half years experience as a Section Foreman, **did not** take into account the tremendous lateral pressures on a curve which would exceed the normal pressures exerted on the rail caused by a train consisting of 3 locomotive units, 50 loads and 29 empty cars having a total weight of roughly 5,000 tons.

The record establishes that the Carrier has satisfied its burden of proving that the claimant violated Circular 15, Rules G and F by failing to observe "any deficiencies requiring attention" and failing to **"take** appropriate action", resulting in unsafe track conditions, causing the derailment of Train 142. The record does not support the conclusion that the derailment was due to a chipped or damaged switch point and stock rail, or to "something" that "fell from or dropped from the train.*

The Carrier has indicated that the Claimant has not been banned forever from regaining his Foreman's seniority but will be re-evaluated at such time to determine whether he has **"gained** the benefits of rehabilitation and experience to warrant returning his Foreman's rights." In any event, it is the Board's judgment that the discipline should not be disturbed.



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

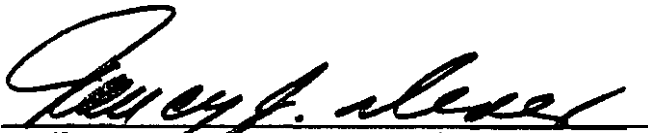
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.