

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25480

Docket Number **MW-25273**

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of **Way Employees**
(Consolidated Rail Corporation
(former Lehigh Valley Railroad Company)

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

(1) The disciplinary demotion of Foreman A. R. **Holmes** for alleged falsification of **"monthly** switch inspection report submitted September 24, **1980"** and alleged 'failure to properly perform assigned duties as foreman in 'that you failed to make proper inspection of A&I switch in Ithaca **Yard"** was without just **and sufficient cause** and on the basis of unproven charges (System **Docket** 6681.

(2) Mr. A. R. Holmes' seniority as foreman be restored and unimpaired and he shall be compensated for all wage loss suffered beginning November 7, 1980 until he is returned to work as a foreman with seniority as such unimpaired.

OPINION OF BOARD: At the **time** this dispute arose, Claimant A. R. Holmes, was employed as an **Area** Foreman, assigned to Carrier's Ithaca Yard in Ithaca, New York. On September 24, 1980, Claimant made his regular monthly inspection of the A & I Switch at the North End of Ithaca Yard. He recorded the condition of the switch to **"good"** on his inspection report.

On October 21, 1980, three cars in a train derailed at the South end of the switch, allegedly due to wide **gauge** account of timber condition in that area.

As a result of this incident, Claimant was ordered to appear for a hearing in connection with the following charge:

• **Falsifying** monthly switch inspection report submitted September 24, 1980 which indicated A 6 I switch was in **good** working condition. Also failure to properly perform assigned duties as foreman in that **you failed to** make proper inspection of A & I switch in Ithaca Yard which resulted in derailment of three cars of WSIT-1 on October **21**, 1980 due to wide gauge account of timber condition. .

The hearing was held on November 3, 1980. Subsequently, Carrier notified Claimant that he had been disqualified in all **capacities** as Foreman.

The Organization timely protested Claimant's disqualification. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends **that** the timber condition on September 24, 1980, did not warrant special citation or attention. It points out that Track Supervisor R. L. Rudloff did not note any evidence of new movement in the area in question from September 24, 1980, to October 21, 1980. Thus, the Organization reasons that both Claimant and Supervisor Rudloff believed the area to be in acceptable condition.

In the Organization's view, the A & I switch condition worsened by the large amount of tonnage traveling over it daily. Therefore, the Organization contends, the condition of the A & I switch deteriorated after September 24, 1980, so as to cause the derailment of October 21, 1980.

Under these circumstances, the Organization concludes that the Claimant filed a fair and accurate report. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, asserts that **Claimant** was properly found guilty of filing a defective switch report. It points out that Supervisor of Track S. C. May testified that the poor track condition must have **existed** for **"quite** some time prior to September 24". In Carrier's view, **Assistant** Supervisor Rudloff corroborated this testimony. Thus, Carrier argues that the inspection report of September 24, 1980, was false in that it reported the condition of the A & I Switch as **"good"**. Under these circumstances, Carrier concludes, disqualification is a penalty. Thus, Carrier asks that the claim be rejected.

A review of the record evidence convinces us that the claim must be sustained in part. Claimant is charged with 'falsifying' his switch report of September 24, 1980. However, nothing in the record suggests **that** Claimant deliberately **entered** a false statement as to the condition of the A & I switch. At most, Claimant may have failed to accurately perceive the deteriorated condition of the area in question.

Under these circumstances, Claimant's report of September 24, 1980, was negligently made. However, it was not falsified.

In our **view**, Claimant should be restored to his position as an Area Foreman and his restoration should become effective with 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 **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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.