

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **25529**
Docket Number MW-25797

James Robert **Cox**, Referee

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

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

(1) The disciplinary demotion of I&R Foreman G. V. Butler and his permanent disqualification as I&R Foreman and track foreman was excessive and without just and reasonable cause (System **Docket** CR-102-D).

(2) Mr. G. V. Butler's seniority as I&R Foreman and track foreman shall be restored and unimpaired.

OPINION OF BOARD: About two hours after Claimant G. V. Butler, an Inspector and Repair Foreman, inspected the **Calumet** River Line Secondary Track March 31, 1982, a derailment of three (3) cars due to a wide gauge condition occurred at Milepost 4.4. Claimant was immediately demoted and disqualified as a Track Foreman and charged with negligence in the performance of his duty through failure to detect and report an apparent defective track condition so that remedial action could be taken.

The investigation of the derailment revealed seven bad ties in a row, a joint on the high side of the curve with a 58-1/4 inch gauge, 1-1/2 inches low, excessive wide gauge at other points, and ties hanging as much as 2 inches. There were also rail marks indicating that the gauge had been wide for some time.

After reviewing the evidence, the Board finds that, had Claimant properly performed his job, he should have been aware of the defective track. He could have taken the track out of service or obtained safety ties in order to avoid a derailment. The record shows that previous trains had gone over this bad track shortly before the accident and also the Inspector's hi-rail went over it during the course of his inspection,

Based upon Claimant Butler's previous good record, however, the Board finds the penalty too severe and orders reinstatement as Foreman but without back pay.

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 28th day of June 1985.

