

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25667

Docket Number MW-25645

Nicholas **Duda**, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company

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

(1) The dismissal of Foreman D. L. Phillips for **alleged** responsibility in connection with a derailment in the vicinity of Mile Post 205.2 on February **10, 1983** was without just and sufficient cause and unwarranted (Carrier's File 013.31-271).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was hired as an Apprentice Section Foreman on March 16, 1970. Thereafter he worked in the Carrier's Maintenance of Way Department in the capacities of Apprentice Section Foreman, Extra Gang Foreman, Section Foreman, and Roadmaster during the next thirteen years until he was discharged on May 7, 1983. He was familiar with rules, regulations and requirements of the Carrier regarding the work of a Section Foreman and was experienced in the duties of that job.

Claimant had been instructed by his Roadmaster to raise the road crossing which traverses a curve on the main line track near Mile Post 205.2. The physical characteristics of this area were well known to the Claimant because he had been regularly assigned as Foreman on this section for the past seven years and had worked in the section even before that time. About **12:05** p.m., February 10, 1983, while work was being performed to accomplish the crossing assignment by Section Gang forces under Claimant's charge, a north-bound train approached for through movement **over** this section of the main line track. The train proceeded through the area without any speed restrictions. While moving over the work area at the normal authorized speed, two cars became derailed at the point where the maintenance work was being performed.

An investigation was conducted to ascertain the facts and determine Claimant's responsibility in connection **with** the derailment of the two cars. Based on the transcript of the investigation, the Carrier determined that Claimant was responsible and he was dismissed.

Claimant received a fair and impartial hearing. Furthermore, the investigation revealed substantial and credible evidence that the derailment occurred as a direct result of Claimant's increasing the elevation of the high rail in the curve contrary to Rule **584** of the Maintenance of Way Rules and Regulations and failing to place a slow order on the concerned track as required by the rules. Accordingly, there is no question that the Carrier had cause to discipline Claimant.

There is a **question whether** the discharge penalty for Claimant's negligence was excessive. Claimant had been employed by the Carrier for over thirteen years. The Carrier relies, in part, on Claimant's past discipline record to support discharge. In particular, the Carrier relies on an earlier dismissal because Claimant "failed to line main line switch". That incident occurred about nine months after Claimant was hired as an Apprentice Foreman; he was returned to service in February, 1971 after two months. In 1971, he was also reprimanded four times, primarily for "failure to make proper work reports." In the next 11 years Claimant received only one discipline, a reprimand for "failure to proper (sic) instruct men on his district." This last reprimand occurred eight years before the subject derailment incident. It may well be that the discipline summarized above does not constitute an outstanding record. On the other hand,, it does not particularly legitimize or make reasonable discharge of a long-term **Employee** for the first-reported instance of serious negligence in over twelve years.

The type of negligence committed by the Claimant is extremely serious. Fortunately the derailed cars were observed and the train was brought to a stop rather quickly. Undoubtedly the Carrier is correct in stating "this situation could have developed into a catastrophe because a required speed restriction had not been issued by the Claimant...." As already indicated, the Carrier could reasonably conclude that Claimant had exercised poor judgment in not issuing the slow order. Having personnel recognize and comply with the rules is extremely important and justifies use of very significant discipline for violation. However, under the circumstances of this case, the discharge penalty is excessive and should be modified. A suspension of over two years is certainly adequate to emphasize to Claimant, as well as others, the critical need to obey the rules and regulations. Therefore, the Board directs the reinstatement of Claimant without pay for time lost, but with seniority and other rights unimpaired.

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. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.