

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25950

Docket Number MW-26009

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company (Southern Region)

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

(1) The dismissal of Mr. J. O. Sears and the thirty (30) days of suspension imposed upon Mr. C. C. Alford for their alleged 'failure to comply with motor car line-up resulting in damage to Motor Car 1163 and personal injury to signal maintainer at approximately 10:30 A.M., Thursday, May 19, 1983, near M.P. 373.5, New River Sub-Division' was improper, a gross injustice and without just and sufficient cause (System File C-D-1849/MG-4150).

(2) Claimant Sears shall be returned to service with seniority and all other rights and benefits unimpaired; both of the claimants' records shall be cleared and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant Sears was in charge of a self-propelled Track Car, a Track Liner Machine, which was to transfer by rail from one of Carrier's Yards to a rendezvous point to the east; it was to be met by Motor Car 1163 coming from the opposite direction, and thereupon escorted further eastward.

Under Claimant Sears' orders the Track Car proceeded eastwardly a mile past the authorized rendezvous and there rammed Motor Car 1163. Both cars were being braked, but momentum of the Track Car carried it into Motor Car 1163 after the latter had come to a standstill.

The outcome of a Board of Inquiry Investigation into the collision was Claimant Sears' dismissal. Further, Claimant Alford, who was in transit traveling aboard the Track Car and who possessed some experience as a Track Car Operator, was suspended from service for 30 days.

Implicating the latter Claimant Alford in the chain of events leading up to the collision stretches reason; he was a permitted occupant of the Track Car, exercising no control, function, or authority. With his utter lack of familiarity with the area, we do not see it as a reasonable decision, but an arbitrary one to find him at fault.

Claimant Sears' fault is conceded; he entered an area and was moving the Track Car where he had no authority to be.

Claimant Sears is a thirteen year employee with a clean service record. There was some confusion as to how to interpret radioed information he was receiving and as to how to identify the rendezvous point, particularly under existing poor visibility due to rain. His action came from poor information, a poor presumption, and he executed it poorly.

But permanent dismissal of Claimant Sears is excessive. We will award that he be restored to service with seniority and other rights and benefits unimpaired, but without compensation for time lost.

We will award that Claimant Alford be compensated for the work days that fell within the period of suspension and that his record be cleared.

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

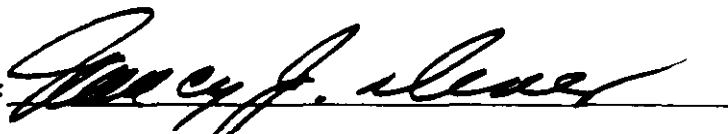
That the discipline was excessive.

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 14th day of March 1986.