

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26048
Docket Number MW-25789

John. B. LaRocco, 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 Patrol Foreman S. Hatten, his disqualification as patrol foreman and the fifteen (15) days of suspension imposed upon him for alleged 'failure to insure that No. 1 Track on the Conemaugh Main Line at Mile Post 77.04 complied with Section 213.53 (b) and (c) in Conrail's MW-4, following your inspection on Tuesday, May 5, 1981' was without just and reasonable cause and on the basis of unproven charges (System Docket 713).

(2) Mr. S. Hatten's seniority as patrol foreman be restored and unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered by him until he is returned to work as a patrol foreman with seniority as such unimpaired".

OPINION OF BOARD: At a May 31, 1981, Investigation, Claimant testified that he carefully examined the condition of the Conemaugh Main Track Number 1 at Milepost 77.04 on May 5, 1981. He measured the Track Gauge. The maximum gauge was 57.25 inches which was within prescribed standards. While he saw a few bad ties, Claimant did not observe any abnormal tie plate wear. Claimant did not note any track defects on his daily Inspection Report.

Two days after Claimant inspected the track, a train derailed at Milepost 77.04. The Track Inspection Foreman and the Track Supervisor related the results of an Investigation which they conducted to ascertain the cause of the derailment. They concluded that extremely poor track conditions were responsible for the accident. At the derailment site, the Foreman and Supervisor measured a Track Gauge of 58.25 inches which was one half inch above the maximum allowable gauge. They also observed worn ties, dark marks on the low side of the rail and four consecutive unspiked ties. In addition, some ties contained cuts which are usually attributable to tie plate movement.

Following the Investigation, the Carrier suspended Claimant for thirty days and demoted him from Track Patrol Foreman. As a result of a June 12, 1981, Appeal Hearing, the Carrier reduced the suspension to fifteen days in view of Claimant's unblemished work record during thirty years of service. However, the Carrier affirmed Claimant's disqualification as Track Foreman.

Immediately after the derailment, two reliable witnesses observed the poor track condition at Milepost 77.04. Specifically, the rails were further apart than permitted by applicable standards. Ties were worn (and many ties lacked spikes to properly anchor the rails). More importantly, both the ties and the rails displayed marks which are symptoms of a wide gauge problem. Since these characteristics develop gradually, the track at Milepost 77.04 did not suddenly deteriorate in two days. Therefore, Claimant negligently overlooked the poor track conditions during his May 5, 1981, inspection.

We realize that the Carrier already reduced Claimant's suspension to fifteen days based on his prior good work record and his service longevity. Nonetheless, a permanent demotion from Track Inspection Foreman was excessive and unduly harsh. During thirty years of service, Claimant accumulated not merely a good, but an outstanding work record. This incident was his first infraction. Claimant shall be restored to Track Inspection Foreman with his seniority unimpaired but without back pay. The fifteen day suspension stands.

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 11th day of June 1986.