

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26512

Docket Number MW-26096

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

1. The disciplinary demotion of Machine Operator R. White, Sr. and his disqualification as machine operator and truck operator was excessive, without just and proper cause and unwarranted (System File 1983-11/013-30).

2. Mr. R. White's seniority as machine operator and truck operator shall be restored and unimpaired and he shall be allowed the difference between what he would have received at the machine operator's rate and what he was paid at the laborer's rate from June 16, 1983 until he is returned to work as a machine operator with seniority as such unimpaired."

OPINION OF BOARD: After the track machine which the Claimant was operating struck another piece of equipment, the Carrier determined that he failed to exercise necessary care.

The evidence is clear that the accident was the Claimant's responsibility. **However**, the incident occurred while the Claimant was working as a Track Machine Operator, not as a Truck Operator. Accordingly, while some of the same qualifications certainly would apply to both positions and the Carrier, therefore, was not unreasonable in reaching its conclusion to disqualify the Claimant, we find that the time period that has passed since the Claimant was disqualified is sufficient penalty. Therefore, the Claimant is to be permitted another opportunity to qualify for a truck driver's position.

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:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.

Serial No. 333

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 26512

DOCKET NO. MW-26096

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: Terminal Railroad Association of St. Louis

Award No. 26512, which sustained the Carrier's decision to disqualify the Claimant, also concluded that the "time period that has passed since the Claimant was disqualified is sufficient penalty."

It is the intent of the cited Award to restore the Claimant's **senior-**ity as a Truck Operator and to allow him to exercise that seniority as **soon** as he is judged qualified for the Truck Operator position.

Referee Eckehard **Muessig**, who sat with the Division as a Neutral member when Award No. 26512 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.