

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28702
Docket No. MW-29292
91-3-90-3-191

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(CSX Transportation, Inc.
(Formerly The Seaboard Coast Line Railroad Company)
PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

"(1) The Agreement was violated when the Carrier dismissed J. G. Branch from service for running a Ballast Regulator into a Jr. Tamper which, in turn, was shoved into Plasser Tamper, resulting in \$19,996.66 damage and two personal injuries. [Carrier's file 12 (89-693), Organization's file JGB-89-44].

(2) As a consequence of the aforesaid violation, Mr. J. G. Branch shall be reinstated to the service with pay and his record cleared of the incident."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 31, 1989, Carrier charged the Claimant with striking a Jr. Tamper and knocking it into a Plasser Tamper, resulting in minor injury to two (2) employees and \$20,000 worth of equipment damage. The Claimant was advised that his alleged actions were in violation of certain specified safety rules, and he was instructed to attend a Hearing on the charges.

Subsequent to the Hearing, the Claimant was found guilty and after his personnel record was reviewed, he was terminated from service.

The Organization has raised defenses on the merits and has also asserted certain procedural errors. We have considered the procedural allegations, but we are unable to find that any of the Claimant's rights were abridged.

Concerning the merits of the dispute, we have noted the Claimant's contention that he was operating his Ballast Regulator in a slow and safe manner and that it was necessary for him to turn in his seat in order to manipulate the gears. Nonetheless, our review of the entire record convinces us that the Claimant, by his own admission, was inadvertent to his duty, and that there were no discernible mechanical failures which caused, or contributed to, the incident. In short, there was appropriate evidence to support a finding of guilty.

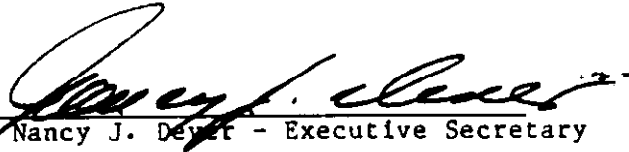
We have noted that the Claimant had 19 years of service with the Carrier, and during all of that time his significant prior difficulties appeared always to be related to the operation of machinery. In our view the Carrier's assessment of dismissal was unduly harsh. Accordingly, we will set aside the termination and restore the Claimant to service, but without back-pay. The Claimant's restoration to service shall be as a Trackman and he shall not be considered for promotion in any classification for at least three (3) years from the date of this Award.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 28702

DOCKET NO. MW-29292

NAME OF ORGANIZATION:

Brotherhood of Maintenance
of Way Employees

NAME OF CARRIER:

CSX Transportation, Inc.
(former Seaboard Coastline
Railroad Company)

This matter has been returned to the Board, on the request of the employees, for an interpretation. The Board has reviewed the written arguments and heard oral presentations of the parties. We find that the Award that was rendered by this Board on February 28, 1991 set aside the termination and restored the Claimant to service, but without back pay, and the restoration was as a Trackman position. The Award specified that the Claimant shall not be considered for promotion in any classification for at least three (3) years from the date of the Award.

The Carrier contends that only the Claimant's seniority as a Trackman was reinstated by the Board, but the Board did not intend to reinstate all of the Claimant's seniority.

The Organization has requested that the Third Division interpret the Award to answer the following question:

"Did Claimant Branch lose ALL of his former seniority (other than as a Trackman) or was he merely restricted from using his former seniority for purposes of promotion to any classification (other than as a Trackman) for a period of three (3) years from the date of Award 28702?"

The Award did not divest the Claimant of all of his former seniority. If the Board had so intended, the Award would have so stated in clear terms. Rather, the Award merely restored the Claimant to service as a Trackman and precluded him from consideration for promotion in any classification for a period of time. There is nothing in the Award to state or suggest that the Award was intended to do more than that or to divest the employee of his seniority in classifications other than that of a Trackman.

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Referee Joseph A. Sickles, who sat with the Division as a neutral member when Award 28702 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
by Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994