

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
LEHIGH VALLEY RAILROAD COMPANY**

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

- (1) That the dismissal of Anthony Frinzi, Section Foreman at Easton, Pa., on March 13, 1946, was unjustifiable, improper and unwarranted;
- (2) That Anthony Frinzi shall be reinstated as section foreman at Easton, Pa., with seniority rights unimpaired and paid for time lost equal to that which he would have earned as section foreman at Easton, retroactive to March 13, 1946.

OPINION OF BOARD: Anthony Frinzi was first employed by the Carrier in 1902, as a laborer. In 1906 he was promoted to section foreman and had to the time of discharge been employed in that capacity. On March 13, 1946, he was discharged by the Carrier because he had accumulated more than ninety demerits against his record. The Carrier has a plan of discipline which contemplates the assessing of demerits, and when the demerits assessed reach ninety the employe is discharged. Rule 5-a, so far as here material provides, "an employe **** will not be discharged or have demerit marks placed against his record without a fair hearing ****."

On February 18, 1946, a derailment occurred on track under the supervision of Mr. Frinzi. On February 28, 1946, the Carrier purported to give Mr. Frinzi a hearing on this derailment, and as a result of this hearing assessed fifteen demerits against his record, which brought his total demerits to one hundred. The transcript of this hearing appears in the record. The hearing consisted entirely of an examination of Mr. Frinzi, and other than formal questions, this examination was as follows:

"Q. Mr. Frinzi, you were present at this derailment on February 18th, were you not?

"A. Yes. I was called there when it happened.

"Q. Are you familiar with Rule 818 of the current Book of Rules?
(Rule read.)

"A. Yes.

"Q. How did you find the condition of the track at the location of the derailment?

"A. There was one rail bent out due to the derailment.

"Q. When did you last inspect this track where the derailment occurred?

"A. About two weeks ago.

"Q. How did you find the track at that time?

"A. It was in good condition.

"Q. Were there any low joints or any other unsafe conditions at that time?

"A. Not that I could see.

"Q. It was a worn switch point that caused the accident. What condition was that switch point in when you inspected it?

"A. It was tight against the stock rail.

"Q. At the time of the derailment the switch point was worn. How do you account for the derailment due to this worn switch point?

"A. The flange on the wheel was more than half worn out. If the flange would have been half way good this would not have happened. The engine and the tank and the west truck of this car went over this switch point and the leading wheel on the east truck became derailed, causing the switch point to gap and bend a rail and this caused the second car to derail, but the rear truck of the second car and the two following cars went over this switch point okay.

"Q. Do you accept any responsibility for this derailment?

"A. No.

"Q. Why do you not accept any responsibility?

"A. Because there are other switch points on the railroad that are as badly worn as this one was and if the flange of the wheel had not been worn this accident would not have happened.

"Q. Is there anything further you would like to say?

"A. No."

This was the hearing, if it may be called such. The Carrier introduced no evidence in support of its charge against Mr. Frinzi. As said in Award 1294, "The rules do not require that there should be such a preponderance of evidence in support of the charge as would satisfy the requirements of a strictly legal proceeding. Cf. Award 232. However, the rules do contemplate a fair and impartial hearing where evidence in support of the charges should be adduced. Cf. Awards 135, 232, 431, 562 and 775. The rules do not specify the type of evidence that should be adduced, but that the rules require evidence of some kind to support the charge we believe to be implicit in the very rule which provides for the hearing."

As stated above there was no evidence offered by the Carrier upon which it might justify its action. The only evidence offered as set out above is that of Mr. Frinzi which placed the cause of the derailment upon the worn wheels, for which he was not responsible. Upon this record we can do nothing other than hold that the assessment of the fifteen demerits as a result of the hearing on February 28 cannot be sustained. Without these fifteen demerits Mr. Frinzi has less than ninety demerits against his record, and it follows that he was improperly discharged.

The record contains no transcript or record of the hearing of February 25, 1946, relating to the occurrence of February 21, 1946, and the Board is therefore not in a position to pass upon the assessment of demerits due to this occurrence.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 discharge of Mr. Frinzi is without support in the evidence.

AWARD

Claim (1) sustained; claim (2) sustained except that there should be deducted any amount earned in other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.