

Award No. 6135
Docket No. MW-6074

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

(1) That the Carrier violated the effective agreement when it disqualified Foreman J. L. Hills who was assigned to supervise a so-called Mobile Maintenance gang, and refused to permit him to return to his former position as Section Foreman;

(2) That Mr. J. L. Hills be returned to his former position of Section Foreman with seniority and vacation rights unimpaired and be reimbursed for all wages lost because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. John L. Hill has been employed in the Maintenance of Way Department since March 7, 1929. On October 10, 1944, he was promoted to the position of Section Foreman and continued to fill that position with the exception of a brief period beginning on September, 1949. During the month of March, 1950, he was assigned to the position of Mobile Maintenance Gang Foreman.

A Mobile Maintenance Gang is actually an Extra Gang. Mobile Maintenance gangs are assigned to outfit cars that are moved to different locations as work locations are changed, cooking facilities are provided, the assigned territory is ordinarily the entire territory under the jurisdiction of one Roadmaster or more, and the number of men employed in each gang is considerably larger than that of a section gang. In addition, work performed by these Mobile Maintenance gangs are ordinarily more of the nature customarily performed by Extra Gangs and because of the extensive territory assigned to such gangs, foremen assigned thereto are not as intimately familiar with the territories as section foremen usually are.

Claimant John Hill was assigned as foreman of a Mobile Maintenance gang which was assigned to an out-of-face surfacing program, using a Jackson Multiple Power Tamper and a power jack. Twenty-five men were supervised by the foreman. No time-keeper or assistant foreman was assigned to this gang.

The responsibility attached to a Mobile Maintenance gang foreman's position is considerably in excess of that of a section foreman. Experience

OPINION OF BOARD: In March, 1950, Claimant, a Section Foreman, bid in the position of foreman of Mobile Maintenance Gang No. 4. This gang consisted of 25 men. It was assigned to camp cars equipped for eating and sleeping and was used in out-of-face surfacing. There was no assistant foreman or timekeeper.

About the first of June, 1950, said gang was engaged in out-of-face service, using a Jackson Multiple Power Tamper and a power jack, when information reached the roadmaster that the work was not being properly performed. The roadmaster made an inspection as a result of which the Claimant was charged, given a disciplinary hearing and demoted to track laborer.

It appears that prior to having been assigned as foreman of the Mobile Maintenance Gang, the Claimant had a record of five years of satisfactory service as a section foreman. On this state of the record it is urged on behalf of the Claimant that the Carrier's action in demoting him to track labor was arbitrary and unreasonable and that, at most, he ought to have been permitted to resume his former position of section foreman. In that connection, we quote from the Carrier's statement at the hearing:

"It is not entirely outside the realm of possibility that had Mr. Hills returned to service as a section laborer and shown the proper attitude and spirit in his work he might later have been **reinstated** as a foreman." (Our emphasis).

It may be observed that had the Claimant acquiesced in his demotion to track laborer he would have had no right to subsequently demand or ask for reinstatement as a section foreman. Whatever relief he obtains along that line must come as a result of this proceeding. We have read the record including the transcript of the hearing and we find no basis for the conclusion that the Claimant did not show the proper attitude and spirit. It is true that he did not immediately assume the duties of a track laborer after his demotion, but that could hardly be regarded as insubordination or as manifesting an improper spirit. The reluctance of one who has successfully filled the position of section foreman for five years to take up the work of a track laborer is understandable.

In view of the Claimant's previous record and the further fact that his failure to satisfactorily perform the duties of Mobile Maintenance Foreman may well have been due to the increased responsibilities incident to the use of the mechanical equipment, we are of the opinion that the discipline imposed was excessive and that Claimant ought to have been given the opportunity of returning to his former position as Section Foreman. In reaching this conclusion we find no necessity for answering numerous other questions sought to be presented by the parties.

The Carrier urges, however, that even if part (1) of the claim be sustained, that part of (2) demanding reimbursement for wages lost cannot, for the reason that it was never presented to the Carrier and considered on the property. In answer, the Employees cite Rule 19 of the Agreement which provides that when charges against an employe are not sustained, his record shall be cleared and that he shall be reinstated and compensated for wage losses, if any. Rule 19 has no application here. We have not held that the charges were not sustained. We have merely said that in the light of the facts we consider that the punishment inflicted on the Claimant was too harsh and that he ought to have been permitted to return to his former position as section foreman. Since the Carrier's statement, to the effect that the demand for wage losses was not asserted on the property, stands unchallenged that part of the claim will be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 should be modified to the extent indicated in the Opinion.

AWARD

Claim sustained in part and denied in part, as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 17th day of March, 1953.