

Award No. 11166

Docket No. MW-10522

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MAINE CENTRAL RAILROAD COMPANY
PORTLAND TERMINAL COMPANY**

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

(1) The demotion of Assistant Foreman Charles S. Proctor to Trackman and suspension from service for a period of six (6) days effective as of October 21, 1957 was excessive, arbitrary, unfair and without just and sufficient cause and in violation of the effective Agreement.

(2) Charles S. Proctor now be restored to the position of Assistant Foreman with seniority rights unimpaired and reimbursed for all wage loss suffered because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: The Claimant was demoted from Assistant Foreman to Trackman and suspended for a period of six (6) days. This discipline was imposed after an investigation held by the Carrier found that the Claimant was responsible for a collision between a switch engine and a motor car operated by the Claimant.

The Claimant while operating his motor car with a push car ahead of it collided with a switch engine on Track #73, said track was lined against the motor car. At the time of the collision, the Claimant was operating his motor car in reverse. As a result of the collision, the motor car was damaged, and members of the track crew riding on the motor car were injured slightly.

The relevant operating rules involved in the case at bar are as follows:

"1000.

(a) Men must be detailed to keep sharp lookout in each direction, noting position of switches, condition of flangeways, highway crossing approaches, and other track conditions. They will call to motor car operator's attention any unsafe or danger-

ous conditions. Crew must be instructed just what each should do when necessary to take car off quickly.

“(b) Cars must approach public grade crossings under complete control prepared to stop, and must pass over crossing carefully after clear view has been obtained in all directions so that the way is known to be clear.

“(c) Where view is obstructed or where highway traffic is heavy, or where crossing is protected by automatic crossing signals or gates, a flagman must be sent ahead to flag crossing.

“(d) Cars must give way to highway traffic except when so protected. The presence of a crossing watchman on the crossing does not relieve the motor car operator from taking proper precautions.

“(e) If crossing watchman does not give proper protection promptly the matter should be reported.

“(f) A motor car should not be run backwards except as necessary in an emergency. Then it should be run very slowly and turned as soon as possible.”

“1003.

(a) Cars must not exceed a speed of five (5) miles per hour and must be under complete control when passing stations, men working or walking on track, train standing on adjacent track, through interlocking, over switches, frogs, railroad, highway or private crossings at grade. At all other points motor cars are restricted to a speed of twenty (20) miles per hour.

“(b) Cars must always be run at such speed that they may be stopped within one-half the seeing distance in order to protect against collisions or obstructions on the track.”

An examination of the transcript reveals that the Claimant failed to comply with Rule 1000 (a). The testimony of witnesses reveal that Claimant did not inform the members of the crew the direction he intended to travel. This latter information would be a necessary factor in maintaining a proper lookout.

Rule 1003 (a) was violated, the evidence submitted indicated a failure to keep the car under control.

In light of the foregoing illustrations of rule violations, we cannot hold that the Carrier's action was unjust or arbitrary. Also, it is well settled by previous awards of this Board that the Claimant's past record may be considered prior to imposing the discipline.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1963.