

Award No. 13124

Docket No. MW-13159

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The demotion of Section Foreman W. T. Price and the restriction of his services to Section Laborer was not based on just and sufficient cause.

(2) Claimant W. T. Price be restored to his former position as Section Foreman with seniority and all other rights unimpaired and be compensated for all wage loss suffered because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: This is a discipline case which we review as an appellate forum. The scope of our review is limited to: (1) was there a fair and impartial hearing on the property; (2) are the findings made on the property supported by substantial evidence; and (3) if the employee is found guilty as charged, was the discipline imposed reasonable. We do not weigh the evidence *de novo*.

Substantial evidence is that material and relevant evidence which if credited by the trier of the facts supports the findings made on the property.

THE FACTS

Claimant was employed by Carrier as a Section Laborer in July, 1926. He was promoted to position of Section Foreman on August 16, 1945. On November 2, 1954, he was demoted to Section Laborer. Effective July 15, 1955, he was restored to position of Section Foreman.

On August 31, 1961, Claimant was assigned as section foreman on Carrier's Sheridan Division headquartered at Osage, Wyoming. His section was 17 miles long extending between Mile Posts 531 and 548. On that date Claimant was in charge of a section gang consisting of himself, as foreman, and two section laborers. The gang was raising track on a curve between Mile Posts 544 and 545 which extended for a distance of 1,318 feet. Eastbound trains approach this as a left-hand curve while on a descending grade of .80 maximum.

At the point involved there was a low spot $\frac{1}{4}$ " to $\frac{3}{4}$ " in depth requiring the rail to be jacked up and ballast tamped for 75 feet on the inside and 156 feet on the outside rail.

The crew commenced working at 7:30 A.M. At 9:15 A.M. the Track Supervisor was at the location and made no comment as to the manner in which the work was being performed. By lunch time the crew completed raising the track on the high side. After lunch they began on the low side and by 2:45 P.M. it had been raised but some ties remained to be tamped. Extra 374 East was due to pass shortly thereafter. Section Laborer Avina, one of the gang, was asked by Claimant to examine the track before the train arrived. His unchallenged testimony as to his observations and what he reported to Claimant is:

"314-Q. Mr. Avina, were you one of the section laborers assigned to work with Section Foreman Price on August 31, the day of the derailment?

A. Yes Sir.

"315-Q. How long have you worked on this section?

A. I worked on the section nine years.

"316-Q. Was this at this same location?

A. Yes Sir.

"317-Q. How long have you been working for Mr. Price?

A. I worked with him one time before.

"318-Q. Have you worked with Mr. Price since he took the Osage section?

A. Yes Sir.

"319-Q. Have you heard the statements which have been made by Mr. Day and Mr. Harkness?

A. Yes Sir.

"320-Q. Did you hear the statement made by Mr. Day in which you had told him that prior to the time this Extra 374 East had arrived, that you were working with Section Foreman Price, and that he, Section Foreman Price, had asked you to look at the track and asked you to note it?

A. Yes Sir.

"321-Q. Did you also hear the statement made by Mr. Day that you informed Mr. Price that there was a bad kink in the track and that he better stop the train?

A. Yes Sir.

"322-Q. Is this statement true?

A. Yes Sir.

"323-Q. When you told Section Foreman Price that you thought the track was bad enough to stop the train, what did Section Foreman Price tell you?

A. He said not so bad the train cannot go through.

"324-Q. What did you do or say when Mr. Price said it wasn't so bad that the train could not get over it?

A. I tell him all right but for me it is pretty bad. I look at spot and I tell him he better stop the train.

"325-Q. Did Section Foreman Price make any further statement to you about this?

A. Only I say no the train not go through.

"326-Q. Did you hear the statement made by Mr. Day that after the derailment had occurred that you made mention to Mr. Price, "I told you the train should be stopped."?

A. Yes Sir.

"327-Q. Is this statement correct?

A. Yes Sir.

"328-Q. What was Section Foreman Price's answer to that?

A. It is too late.

"329-Q. Did you have any further conversation with Mr. Price about the derailment?

A. No Sir."

Notwithstanding Avina's report Claimant took no action to stop or slow Extra 374 East. The train, with 58 cars, proceeded through the area at 45 miles per hour and 33 cars were derailed; 24 were a total loss.

After investigating the derailment Carrier sent the following letter to Claimant under date of September 26, 1961:

"This is to advise you that the scope of your activities are restricted to that of Section Laborer for disregard of safety and responsibility for accident, by failure to take the necessary precautions to insure for the safe movement of trains when raising track on curve at Mile Post 544.25, east of Upton, Wyoming, resulting in derailment of train Extra 374 East, at that point, and causing extensive damage to track and equipment in this train, when Section Foreman August 31, 1961."

Thereafter, on October 13, 1961, a hearing was held at the request of Claimant following which the disciplinary action taken was affirmed.

There is uncontroverted evidence that the gang had raised the outside rail over the proper elevation at six different points which brought the ties out of the ballast between $\frac{1}{8}$ and $\frac{3}{4}$ inches more than necessary to eliminate the depression; and, despite this Claimant used the same ballast and made no effort to procure additional ballast. Claimant admitted raising the outside rail over the proper elevation and testified:

"... after the train went by we figured to raise the low side up to elevation."

Concerning his responsibility to have sufficient ballast to hold the track, Claimant testified:

"401-Q. Is it your responsibility to know that you have the proper amount of ballast to hold the track?

A. Yes Sir.

"402-Q. Did you insure that you had enough ballast to prevent

this track from kicking out.

A. No Sir.

"403-Q. Did you disregard safety inasmuch as you did not truck ballast in to insure holding this track in line?

A. Yes Sir."

Further, in the following testimony Claimant admits "some" responsibility for the derailment:

"439-Q. Do you recall the statement you made to Mr. Harkness that you felt you were responsible for the accident because you did not have sufficient ballast to do the work?

A. Yes Sir.

"440-Q. Do you feel, after making this statement, that you did not have any responsibility for the accident?

A. I was responsible some, yes Sir.

"441-Q. Did you take the necessary precautions to stop the train or put a slow order out on the track to have prevented this accident?

A. No Sir."

CONCLUSIONS

Claimant's admissions in his testimony, set forth above, constitute substantial evidence of guilt as charged. We so hold.

We find that the discipline imposed—demotion from Section Foreman to Section Laborer—was reasonable.

We will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.