

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21071

Docket Number MW-21064

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Louisville and Nashville Railroad Company

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

(1) The demotion of Track Foreman D. F. Martin and his disqualification for work in Ranks 1 and 2 was without just and proper cause, was an abuse of justice and discretion and in violation of the Agreement (System File 1-12/D-105155 E-306-18).

(2) Mr. D. F. Martin now be reinstated and paid at the foreman's rate for all straight-time and overtime worked by Timbering Gang No. 150 from 12:00 N on October 31, 1973 until he is reinstated as foreman with his Ranks 1 and 2 seniority.

OPINION OF BOARD: On October 31, 1973, the Claimant was scheduled to begin service at 7:00 A.M. on his regular assignment as the Foreman of Timbering Gang No. 150. Because of an alleged auto accident which occurred in circumstances that prevented him from phoning his supervisor, the Claimant was delayed in reaching work and his supervisor had no knowledge of when he would arrive. He reported for duty at about 12:00 noon, at which time he was verbally relieved of his foreman's duties and informed that he could exercise his seniority in another capacity. The following day he received a letter which reads as follows:

"You have failed to properly protect and carry out the duties and responsibilities required of a foreman and as a result you are disqualified for work in Ranks 1 and 2.

You may place yourself in lower ranks as your seniority will permit."

Following investigation, the Claimant's demotion from the foreman's position was confirmed by a letter from the Division Engineer.

The Employees' appeal raises a procedural issue which is supported by the record and thus the merits of this dispute will not be reached. The procedural issue is based on the Employees' contention that the discipline must be vacated because the Carrier failed to comply with Rule 25(a) which reads as follows:

"Employees in higher ranks who become disqualified for work in the higher ranks may be demoted to lower ranks. Such action shall not be taken, however, until charges have been preferred against the employee, and, if he so desires, a hearing granted in accordance with Rule 27(b). If the employee feels unjustly treated, he shall have the right to appeal his case in accordance with Rule 27(e)." (Underline added)

The Carrier does not dispute that the Claimant was demoted without charges having been preferred and before he had a hearing opportunity. However, the Carrier asserts that the demotion was a disciplinary measure governed by Rule 27 (Discipline and Investigation) and that, since the Claimant's lack of qualifications was not the reason for the demotion, the provisions of Rule 25(a) are not applicable.

Rule 25(a) refers to "employees... who become disqualified for work in the higher ranks," and provides that such employees may be demoted to lower ranks. The rule goes on to state that, as a condition precedent to demotion, charges must be preferred and a hearing opportunity afforded. In terms of who is covered by the rule, the definitional term in the rule is "employees... who become disqualified." This term gives no indication that, because of differing reasons for demotions, some demoted employees are covered by the rule while others are not; instead, the term on its face clearly indicates that the rule encompasses any disqualification and demotion without regard to the reason therefor. Since the disciplinary purpose for the demotion in this case does not render Rule 25(a) inapplicable to the demotion, it must be concluded that the Carrier's action violated that rule and the Employees' position is supported by the record and the rule. Accordingly, the claim will be sustained to the extent that the Carrier shall pay the Claimant the difference between the rate of his lower rank of service and the rate of the foreman's position for the period beginning on the date of his demotion and ending on the date of his restoration to the rank of foreman.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

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That the Agreement was violated.

A W A R D

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1976.