

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22229
Docket Number MW-22197

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation -(Former Penn Central
(Transportation Company)

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

(1) The disciplinary demotion of Track Foreman B. A. Williams and his permanent disqualification as track foreman and assistant track foreman was excessive, without just and proper cause and was an abuse of justice and discretion (System Docket - 310/Eastern Region - Harrisburg Division Case H-1).

(2) Mr. B. A. Williams' seniority as track foreman and assistant track foreman be restored and unimpaired and he be allowed the difference between what he would have received at the track foreman's rate and what he was paid in a lower rated position from December 19, 1975 until he is returned to work as a track foreman with seniority as such unimpaired."

OPINION OF BOARD: The Claimant was employed as a Track Foreman and was involved in an incident which occurred on December 19, 1975, which ultimately led to his discipline by permanent disqualification as Track Foreman and Assistant Track Foreman. He was charged with a violation of Rule 811 of Carrier's "Rules for Conducting Transportation" and specifically, for failure to clear a main track prior to expiration of the time limit granted by Track Car Permit.

Claimant's position hinges primarily on the technical defense of condonation. It is asserted his failure in this instance is quite common on this Carrier and no disciplinary action was previously initiated; therefore, his negligence should be excused. 2

While there is some testimony in the record purporting to establish the frequency of this occurrence, it is by no means persuasive that Carrier officers were aware of such incidents, or if aware, that they failed to take appropriate action. 2

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We feel there is sufficient evidence to establish Claimant's responsibility for the infraction; however, we are not convinced the harsh penalty of permanent disqualification was justified. The Claimant's testimony that the oversight occurred because he was engaged in a multiplicity of jobs carries some weight in mitigation. The Claimant should be reinstated to the rank of Track Foreman and Assistant Track Foreman, with seniority unimpaired, but without compensation.

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 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 was inappropriate.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November 1978.

