

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22594  
Docket Number MW-22518

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Baltimore and Ohio Railroad Company

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

(1) The discipline (demotion) of Track Inspector James R. Gartner was excessive and unwarranted (System File NEW-1027/2-MG-1837).

(2) The Carrier shall return Claimant Gartner to the position of Track Inspector and shall reimburse him for any monetary loss incurred, all in conformance with Agreement Rule 48(e)."

OPINION OF BOARD: Claimant was charged with violating Engineering Department Maintenance Rules 84 and 208 while conducting track inspections between the hours of 10:29 A.M. and 12:17 P.M. on January 13, 1977.

An investigative hearing was held on January 28, 1977, wherein it was determined that he failed to issue two (2) slow orders in timely fashion and was demoted from track inspector to whatever position his seniority status entitled him, effective February 7, 1977. This disposition is now before us.

In defense of his position, claimant argues that the discipline imposed was excessive since he was not provided with the training accorded to other employees in "like" positions and, in fact, had reported the condition on at least ten occasions prior to January 13, 1977. He seeks position reinstatement and compensatory reimbursement for all time lost since his demotion.

On the other hand, Carrier contends that the training sessions were not intended or designed to qualify inspectors and did not affect claimant's perceptions and actions on January 13, 1977. Instead it argues that the record amply demonstrates that claimant didn't contact the train dispatcher regarding slow orders for location of Mile Posts 105-12 and 110-30 until 2:50 P.M., although he passed these points at

approximately 10:35 A.M. and 11:15 A.M. respectively. It notes that claimant acknowledged his familiarity with Rules 84 and 208 and was mindful of the course of action that he should have pursued when confronted with a No. 1 track defect. It avers that the discipline administered was proper and commensurate with the gravity of the offense.

In our review of the case, we agree with Carrier that training or the lack of it was not the factor responsible for claimant's dereliction in this instance. He was familiar with the applicable Engineering Department Rules and had observed them before. More importantly, the record shows that he admitted finding bad track at the aforesaid locations and did not place the slow orders in timely fashion, pursuant to these requirements, even though he could have made them.

This Board has previously stated that failure to place slow orders on tracks deemed unsafe for train passage warranted dismissal. The fact patterns in this case are not conceptually dissimilar from Third Division Award 14573, where this Division held in pertinent part that,

"One of Crawford's prime duties was to place slow orders on track to insure the safety of train passage. The absence of an accident on the days in question cannot excuse his dereliction."

This decisional principle is on point with the fact developments herein. Claimant was responsible for promptly issuing the two (2) slow orders and the fact that a derailment or accident did not occur was not mitigative. While we are thus compelled by the record to deny the instant claim, we hope that Carrier will provide claimant the opportunity to ascend to this position again, if the occasion arises.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.