

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23111  
Docket Number MW-23146

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Louisville and Nashville Railroad Company  
( (Monon Railroad)

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

(1) The discipline of Foreman Gaylord Spires was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File Claim No. 7/D-107030 E-306-17).

(2) The Carrier shall now

(a) restore the claimant's seniority  
above the rank of laborer

and

(b) allow Claimant Gaylord Spires the  
difference between the foreman's  
rate and what he was paid at the  
laborer's rate until he is restored  
to his former position as foreman

and

(c) reimburse Claimant Gaylord Spires  
for additional expense he incurs  
because of his inability to hold  
a position at Bedford, Indiana."

OPINION OF BOARD: Claimant had been in the service of the Carrier since June, 1968. He was promoted to Foreman on January 12, 1975. On December 21, 1977, he was notified by the Assistant Roadmaster:

"You are charged with failure to protect your assignment, as instructed, as Watchman at Mile Q-250.7 during the PM of December 15, 1977 and AM of December 16, 1977. Your failure to watch and protect the track at Mile Q-250.7 resulted in the derailment of tank car AESX 8844 in Train No. 299 at about 3:50 AM on December 16.

"Investigation of these charges will be held in Room 306, Union Station, Louisville, Ky. on Friday, December 30, 1977, at 10:00 AM. Please arrange to be present with your representative, if you desire one, and any witnesses you may wish to call who may have information pertinent to this incident."

The investigation was postponed by agreement and was conducted on February 17, 1978. A copy of the transcript of the investigation has been made a part of the record. On February 24, 1978, claimant was notified of his dismissal from the service.

On October 24, 1978, agreement was reached between the Carrier's highest designated officer of appeals and the General Chairman of the Organization that the claimant would be restored to service as laborer with the understanding:

"It being further agreed that your Organization reserves the right to handle claim with the NRAB for restoration of Mr. Spires seniority above that of a laborer, the difference in rate between that of a Laborer and a Foreman from the date he returns to work until decision is rendered on claim by NRAB, and additional expenses he may incur as a result of not being able to hold a job at Bedford, Indiana, which was his assigned headquarters point when he was dismissed as a Foreman."

The Organization contends that on December 14, 1977, the claimant was instructed to report to the site of a derailment and remained on duty 37 hours.

From a review of the transcript of the investigation, it seems that there may not have been a complete understanding between the claimant and the Assistant Roadmaster as to just what was expected of claimant during the night of December 15, 1977. The claimant contends that he told the Assistant Roadmaster that two men would be required and the Assistant Roadmaster said only one man would be needed.

Based on the entire record, the Board concludes that claimant did not meet his responsibility as a foreman; however, under the circumstances involved, the offense did not justify the discipline imposed. We will award that claimant be restored to his former seniority as a foreman. In all other respects the claim will be denied.

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

That the discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.