

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 27

Case No. 27

System Docket No. BMW-E-D-201

STATEMENT OF CLAIM

Discipline of two-year disqualification as a Foreman assessed to James Teague was arbitrary and capricious and not commensurate with any proven offense.

FINDINGS

The Claimant was subject to an investigative hearing under the following charge:

To determine your responsibility, if any, in that you allegedly failed to properly supervise the work performed by your surfacing crew on April 21, 1993 while employed as Surfacing Foreman. This resulted in the misalignment and humping of Track #2 in the area of MP 24.8 and MP 24.566 in Acton and caused the occurrence of unnecessary train delays and speed restrictions.

Following the hearing, the Claimant was disqualified from the position of Foreman for a two-year period commencing on or about June 11, 1993.

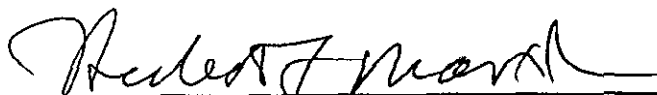
On April 21, 1993 the Claimant was assigned as Foreman of a surface crew working on maintenance of track. The Assistant Roadmaster testified that he visited the work site and "immediately observed that the track was misaligned by approximately one foot coming out of the spiral of the curve into the tangent, a distance of approximately 20 rails or 800 feet". The Roadmaster and the Engineer of Track stated that they had arrived at the work site later in the day and observed some "sags" in the track. As a result, the Engineer of Track replaced the Claimant by assigning another employee to serve as Acting Foreman "to correct the problems".

There is no doubt that the Tamper Operator and possibly others had some responsibility for the faulty results of the work. It follows, however, that, as Supervisor, the Claimant must also bear some of the burden. The record of hearing discusses these matters and many others. The testimony in general leads to the conclusion the Claimant was responsible for his crew's work, whether or not the equipment was faulty or whether there was unsatisfactory performance by the crew.

There is no basis to find that a temporary disqualification of the Claimant was an inappropriate measure. However the disqualification for a two-year period is excessive as a corrective measure. When this Award is issued, it will be more than a year that the Claimant has been disqualified. The Award will provide that the disqualification end with the effective date of the Award, or sooner if is feasible to do so.

A W A R D

Claim sustained to the extent provided in the Findings. The Carrier is directed to make this Award effective within 30 days of the date of this Award.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 10-6-74