

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

STATEMENT OF CLAIM: "Claim on behalf of Extra Gang Foreman, Henry Phillips, Sub-Division #4 of the Ohio portion of the Ohio-Newark Division for the difference in pay between what he receives as a Trackman and what he should have received as an Extra Gang Foreman beginning July 12, 1972 and all dates thereafter or until he is reinstated to the position of Extra Gang Foreman account of being unjustly and unreasonably demoted from the position of Extra Gang Foreman to Trackman as per Mr. A. T. McArthur, Superintendent's letter dated July 12, 1972, File 63-B for violation of operating Rules 7, 35, 1651, 1652, and 1654 on June 2, 1972 while working on the track at Worthington Ave., on the above date."

OPINION OF BOARD: Briefly stated, the record shows that Claimant was renewing ties in the crossing area and had removed seven adjacent ties when this work was inspected by the Track Supervisor. It was discovered that Claimant was working his gang without proper authority to occupy the main track and without flag protection and that when instructed to provide flag protection it developed that he did not have the proper flag protection equipment. A hearing was held after which Claimant was found guilty of having violated the Carrier Operating Rules listed in the claim and, as a result, was demoted to Trackman.

Petitioner concedes that Claimant did, in fact, violate the aforementioned Operating Rules. However, in view of Claimant's long service with the Carrier (25 years) as a Track Foreman, and in light of the mitigating circumstances surrounding the incident, Petitioner argued that the demotion was "ruthless, unreasonable, and uncalled for." Further, Petitioner alleged that Carrier violated the Agreement by not furnishing the Vice Chairman of the Organization with a copy of the discipline notice within twenty days following the hearing. Carrier maintained that this was an inadvertent oversight and did not adversely affect the status of the matter. On this point Third Division Award 11775, treating with an almost identical allegation, stated, in part:

" . . . We hold to the general view that procedural requirements of the agreement are to be complied with but we are unable to agree that Carrier's failure in this regard, under these circumstances, was a fatal error which justifies setting aside the discipline ultimately imposed."

The foregoing rationale is appropriate in this instant case. Obviously, it goes without saying that a Carrier's Operating Rules are promulgated to be followed by employees subject to such Rules. Petitioner, in his submission to this Board recognized this fact by stating, "Strict adherence to the Carrier's Rules is the proper procedure to follow, even if it does take more time to do so." Petitioner stated further, "The technical violation of the rules of course is present." Therefore, we are asked to consider only the basic question of whether, under the circumstances in this case, the Claimant was disciplined excessively in view of his long service and his prior satisfactory work record.

Awards of the National Railroad Adjustment Board are legion on the matter a Carrier's right to assess discipline where an employee has been found guilty of rules violations. For example, and there are numerous others of like substance, Award 17914, stated in part:

"The precedent is well established that this Board should not substitute its judgment for that of the Carrier in discipline cases where it has produced substantial evidence that the offense charged was committed."

However, in the instant case, we are persuaded that in view of Claimant's past record and long service that he be afforded the opportunity to return to the position of Foreman, with seniority as such unimpaired, having suffered sufficiently the penalty of demotion. It was brought out at the hearing in this case that Claimant was reinstated to the position of Foreman on November 26, 1973. Under those circumstances, it is our opinion that the primary objective of Claimant has been satisfied, and we will therefore dismiss the claim.

AWARD:

Claim dismissed.


C. Robert Roadley, Neutral Member


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member

Baltimore, Maryland
March 11, 1974