

PUBLIC LAW BOARD NO. 1838

Award No. 65

Case No. 65

Carrier File MW-PU-80-2

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement Claim is made to restore Assistant Section Foreman Seniority of Rights to Claimant H. C. Scott, and that he be made whole Claim for any difference in pay that he may have lost account of his disqualification until he is restored his seniority rights as Assistant Foreman.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant H. C. Scott was relieved from service as Assistant Section Foreman at 5:00 p.m. on November 27, 1979, for his alleged responsibility of track conditions at M.P. 573.8 at Coal Grove, Ohio, causing the Eastbound track to be unsafe for normal speed of trains.

An investigation was held January 17, 1980, in regards to his disqualification, and the disqualification was sustained in a letter dated February 6, 1980, signed by Division J. D. Gearhart.

Carrier's position is that Claimant Scott was disqualified for not using proper judgment in creating a hazardous situation on a main track with normal speed and not taking any precautionary action to protect train movement.

Carrier points out that in the investigation requested by Organization, J. D. Gearhart, Division Engineer - Maintenance out of Portsmouth, Ohio, testified that on November 27, 1979, during the work day, Claimant Scott received instructions from G. W. Woods, Engineer of Track, to go down to the four degree curve (with a 5 inch super elevation), remove the ballast from the low side of the curve on the westbound track. Supervisor Woods subsequently went to inspect the work site and discovered that Claimant Scott had removed the ballast on the section of the curve from the high side of the eastbound track. Woods related to Gearhart that he (Woods) and Scott had discussed the situation, that Woods maintained he instructed Claimant to remove the ballast from the low side of the westbound, but not to take the ballast away from the high side at the eastbound.

Scott alleged that Woods had instructed him to do exactly what was done.

Supervisor Gearhart testified that no speed restriction had been placed on that section of track because of the hazardous condition created by the removal of the ballast, that after it was discovered a slow order of 10 mph was placed on that section of track and a night watchman was assigned to oversee that portion of the road bed to watch for a shift in the road bed. The assignment of the watchman necessitated sixteen hours of overtime until the condition could be corrected the following morning.

Supervisor Woods testified to the instructions given to Scott by him concerning the removal of the ballast from the low side of the eastbound, not the high side of the westbound track. Claimant Scott was

working with two cranes with operators and assistants at the location that he was responsible for. Other witnesses were called by Carrier, amongst whom was R. C. Carbo, Assistant Roadmaster, who corroborated G. W. Woods' testimony.

The operators of the respective cranes were called and related their recollection of the instructions given to them by Scott and/or Woods. There appears to be some issue of whether or not the bucket of the crane could effectively remove the ballast from the low side without disturbing the ballast from the high side.

However, it is clear from the transcript that claimant was disqualified from holding a supervisory position not for the actual removal of the ballast in question, but for failing to take any precautionary actions to protect the destabilized track bed.

The Board having read the transcript finds that there is sufficient probative evidence in the record to support Carrier's decision. There is nothing in the record before us to indicate that Claimant is permanently barred from holding a supervisory position, consequently, we must conclude that the discipline assessed was not arbitrary, capricious nor excessive when viewed against the backdrop of the potential hazard created and the possibility of a serious and costly wreck that could have occurred absent the precautions taken.

We are impelled to conclude on the record before us that the Claim must be denied.

AWARD: Claim denied.

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A. D. Arnett

A. D. Arnett, Employee Member

E. N. Jacobs, Jr.

E. N. Jacobs, Jr., Carrier Member

A. Thomas Van Wart

A. Thomas Van Wart, Chairman  
and Neutral Member

Issued at Salem, New Jersey, May 6, 1982.