

Award No. 12
Case No. 31

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

1. Dismissal of Foreman T. E. Wolfe was without just and sufficient cause and wholly disproportionate to the offense charged.
2. Claimant shall be reinstated with all benefits and remedies proscribed in Rule 27(f).

FINDINGS:

On August 23, 1977 a derailment occurred at about 2:45 p.m. at a point where claimant's gang were assigned to dig out one track tie at a time, replace it with a new one in the process of spotting cross ties under low joints of track beneath an overhead bridge. Investigation established that the gang had installed five cross ties without spiking them or cross plates. These unspiked ties, according to the

investigation, permitted the rail to spread as the train passed over it and caused the car to begin to derail.

While claimant had left the scene to have an injury treated before the derailment took place, the investigation also indicated to Carrier's satisfaction that much of the work in question -- the installation of the five new cross ties in one place that were not spiked or with plates -- was performed while claimant was on duty. Both claimant and E. E. Drake, the employe placed in charge of the group while claimant was away due to the injury, were dismissed because of the incident. Drake subsequently accepted an offer to return on a leniency basis as a Rank 6 trackman; claimant rejected a like offer.

No valid ground is perceived for substituting our judgment for that of Carrier in the present case. We will, however, direct Carrier to offer claimant immediate reinstatement without back pay to a Rank 6 position with the proviso that after three months satisfactory service in that capacity, claimant may bid to a Rank 3 position.

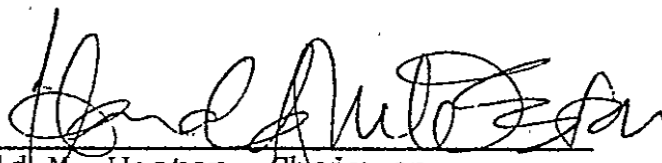
AWARD:

Claimant to be offered immediate reinstatement without back pay, ~~and~~ to a Rank 6 position/and after three months satisfactory service in that capacity shall be permitted to bid to a Rank 3 position. Award to be effective within 30 days of its adoption.

2363- AWO 12

Adopted at Louisville, Kentucky,

December 10, 1979.



Harold M. Weston, Chairman

Carrier Member

Employee Member