

SPECIAL BOARD OF ADJUSTMENT NO. 287

PARTIES: **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
 and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 12

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

(1) The demotion of Section Foreman R. A. Dwire on the basis of unsustained and unsupported charges of responsibility for the derailment of one car was arbitrary, without just and sufficient cause, and in violation of the agreement.

(2) Claimant R. A. Dwire be restored and reinstated to his former position as section foreman on Section 32 with seniority unimpaired and that he be paid the difference between what he earned as a trackman and what he would have earned as a foreman.

FINDINGS: Claimant in this case was afforded two investigations on the charges which led to his demotion from section foreman to trackman. One was held April 22, 1957, and the second one, requested by the Organization, was held on June 15, 1957.

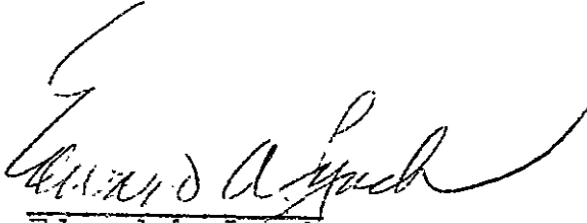
We have read carefully both transcripts, as well as the arguments of the parties. There is no charge that claimant was not afforded a fair and impartial investigation in each instance.

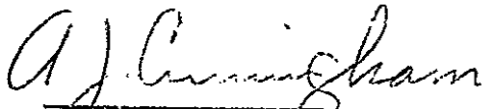
There are many decisions of the Third Division which hold that the Referee should not substitute his judgment for that of management in matters of this kind unless it is proven that management exercised its rights to discipline in an arbitrary or capricious manner; or denied or interfered with claimant's basic right to a fair and impartial hearing on the charges.

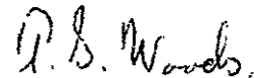
There being no conclusive proof on either here, the claim will be denied.

AWARD

Claim denied.


Edward A. Lynch
Chairman


A. J. Cunningham
Employee Member


T. S. Woods
Carrier Member

Dated at Baltimore, Md.,
this 28th day of March, 1960.