

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION  
With Referee Francis X. Quinn

Award 22 123

Docket 37 562

PARTIES ( United Transportation Union (successor to Brotherhood of  
TO ( Railroad Trainmen)  
DISPUTE (   
( The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: "Request that Yard Foreman rights be restored to Yard Helper W. R. Cundiff, with request for difference in pay between yard helper's rate and yard foreman's rate from Aug. 21, 1957."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Petitioner asks for a sustaining award herein on the basic contentions that the evidence brought out at the hearing did not prove the charges, and that the carrier was in violation of the Discipline and Grievances rule, Article 16, in certain respects.

A careful review of the entire record does not establish violations of Article 16 as alleged; it is further found that claimant admitted to the factual occurrences on which the charges were based thus proving his responsibility therefor. Remaining is the question of whether, in the light of claimant's length of service and prior record, the discipline assessed was too harsh or excessive. Consideration from that standpoint requires that we also take note that respondent offered to restore claimant to full service on a leniency basis, providing petitioner withdrew the claim for loss in earnings, about 8 months after the restriction was imposed. That offer was rejected.

We find that the facts and circumstances of this particular case do not warrant a favorable award and the claim is denied.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY ORDER OF FIRST DIVISION.

DATED AT CHICAGO, ILLINOIS  
THIS 17th DAY OF January 1973.

ATTEST: *E. A. Killeen*  
Executive Secretary