

Referee Harold M. Weston

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Erie Lackawanna Railroad Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that -

Yardmaster D. E. Clancy be allowed one day's pay at straight time rate for each day lost as result of 30 day suspension as well as a 15 day deferred suspension totalling 45 days and that his record be cleared of discipline assessed subsequent to hearing held on March 30, 1970.

OPINION OF BOARD:

Claimant, a yardmaster at Meadville, Pennsylvania, was administered a thirty day suspension as the result of the derailment of Train PB-99 that occurred on March 21, 1970, when a yard crew under Claimant's supervision shoved a group of 25 cars into a train departing from an adjacent train. At the same time a prior fifteen day deferred suspension was activated thus depriving Claimant of a total of forty-five days wages. Petitioner maintains that this discipline must be reversed since it is without basis and the accident was caused by the yard crew's and not Claimant's, negligence.

We agree with Award 1302 that a yardmaster does not guaranty the proper performance of his subordinates' duties and should not be disciplined for their misdeeds unless there is evidence that he himself has been at fault.

In the present case, the yard crew was not only under Claimant's supervision but also was instructed by him to push the 25 cars onto the track without information as to how many cars were already occupying the track. In his testimony, Claimant conceded that it was doubtful as to how much room there was at the time in question and that it was his responsibility to see that there was sufficient space on the track to accomodate the cars. He also testified that he did not utilize available radio communications to ascertain whether there was room on the track before the crew was directed to shove cars onto it.

The foregoing evidence supports Carrier's findings and we find no basis for disturbing them or substituting our judgment for that of Carrier. The fact that the yard crew may also have been at fault does not reduce Claimant's responsibility in this matter. This is not a case where the negligence complained of by Carrier was too remote to affect the accident; on the contrary, it had a direct relationship to the use of the track by 25 cars and derailment.

No reversible procedural error is found in the record and Claimant was afforded reasonable opportunity to present his case; there is no indication that he was prevented from calling witnesses in his behalf or sought additional time in which to present further proof.

In the light of this record, the suspension does not appear to be capricious or arbitrary discipline and we cannot validly hold the activation of the fifteen day suspension inappropriate in view of the established practice on this property that deferred suspensions of from fifteen to thirty days will be activated if an employe is disciplined within nine months.

**FINDINGS:**

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing of thereon.

The parties to said dispute waived right of appearance at hearing thereon.

**A W A R D**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

*E. A. Killeen*  
E. A. Killeen  
Secretary

Dated at Chicago, Illinois, this 24th day of January, 1972.