



This claim is premised on two basis.

- (1) That Claimant assisted his Foreman/Car Retarder Operator in the performance of his duties as Foreman.
- (2) That the nature of the Superintendent's conversation with the Claimant caused the Claimant to respond in the affirmative and to assist his foreman/Car Retarder Operator.

The Superintendent's statement is reproduced and reads as follows:

"At 0920 12/23 I asked Fieldman Bradley Reutz if he would like to go over to the tower and watch Foreman Taylor punch in the 401 switch list as no computer list was available and we had started at 0915 to hump train 401 and 124 cars off Track 91 and the first three cars over the hill two CO's for 51 and CR for #6 were put in wrong and YM O'Harra plug blocked them to Track 50. I then got on the intercom to Foreman Taylor with a copy of 401's hump list in my hand and asked him to read to me what he had in the ABCD bank, and upon him telling me, it was evident that he had not punched in the tracks properly. Upon questioning, he said it had been a long time since he had been in the tower and I told Foreman Taylor that if he couldn't handle the job he shouldn't have taken it. I then told him the correct tracks to list in the A thru D banks. But at no time in my comment to Bradley Reutz did I insist or order him there. My only comment was if he didn't want to be here until after dark to dig out cars it would be to his advantage to watch Foreman Taylor punch in the correct track. But I want it clearly understood that I was careful in the wording of my conversation with Mr. O'Harra as witness that he was not ordered but only suggested being fully cognizant of the fact that B. Reutz was not a promoted man but I knew he had been in the tower on several occasions and had operated the foreman's console."

The resolution of this dispute evolves around the issue of whether or not the Superintendent's discussion with Claimant as in-numbered above, could have reasonably been interpreted by the Claimant to be of such nature that it required obedience.

The statement relates:

- (1) "I asked Fieldman Bradley Reutz if he would like to go over to the tower and watch Foreman Taylor punch in the 401 switch list as no computer list was available....and the first three cars over the hill two CO's for 51 and CR for #6 were put in wrong...."
- (2) The Superintendent spoke with Foreman Taylor ...."it was evident that he had not punched in the tracks properly...I told Foreman Taylor that if he couldn't handle the job he shouldn't have taken it...."
- (3) "But at no time in my comment to Bradley Reutz did I insist or order him there. My only comment was if he didn't want to be here until after dark to dig out cars, it would be to his advantage to watch Foreman Taylor punch in the correct track..."

The above statement by the Superintendent recognizes errors were being made, that the ~~Engine~~ Foreman/Operator was not proficient. The Claimant was asked to go up in the tower because errors were being made. He was asked to go up and watch. Certainly the Superintendent did not expect the Claimant to go up and watch the Foreman make errors. Common sense has to indicate he asked him to go into the tower to assist in order to avoid a repetition of the errors.

The Carrier does not assert nor is there any evidence shown, that the Claimant had any intention of going into the tower on his own volition prior to his conversation with the Superintendent.

The particular situation supports the contention and the finding that the Superintendent through suggestion and inference that by not going into the tower could cause him to work until after dark (digging out cars) influence him to comply and to act in an obedient manner. He responded no differently than had the order been clear and concise rather than couched in ambiguity. Had the Claimant not done so he may have feared consequences. It appears evident the Superintendent expected him to react in that manner.

The only purpose the Superintendent could have had in mind was to have the Claimant assist his Foreman with the duties of Car Retarder Operator by informing his Foreman how to punch the cars into the console for proper results. On this basis, we conclude the Claimant gave information which assisted the Foreman/Car Retarder Operator. He need not participate physically in order to assist.

The Claimant was working in Yard helper service. There is no agreement in effect which permits combining Yard helper service and Foreman/Car Retarder Operator duties.

The principle here involved has previously been adjudicated on this property in Award No. 22, Public Law Board No. 494 and Award No. 32, Public Law Board No. 820. The above Awards sustained the principle that the Claimants therein, as here, were caused to work in two classes of service during the same tour of duty. The above Awards also have sustained the principle that the basic day rule has application to each grade of service performed during a single tour of duty.

The Board also has before it a request that Claimant be accorded a promotion, date of December 23, 1978, based on the service here performed this date.

There is in effect on this property a promotion rule (Article 3 of the Agreement) requiring an examination for promotion. The Claimant did not meet the requirements of the promotion rule by assisting his Yard Foreman for a limited period on date of claim.

AWARD:

The claim is sustained for eight (8) hours and the claim is denied for a promotion date.

The Carrier is ordered to apply the Award within thirty (30) days from date of the Award.

  
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Neil P. Speirs, Chairman & Neutral

  
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For the Organization

  
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For the Carrier

dated August 25, 1981  
Detroit, Michigan