

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT of CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the dismissal of R. L. Mulnix, section laborer, New Cambria, Missouri, on August 8, 1944, was unwarranted and improper;

(2) That R. L. Mulnix shall be reinstated into the service to his former position as section laborer at New Cambria, Missouri, with seniority rights unimpaired and paid for all time lost equal to that which he would have earned as section laborer at New Cambria, Missouri, retroactive to August 8, 1944.

OPINION OF BOARD: In this discipline case, the claim is for reinstatement of employe together with pay for time lost, but since employe was reinstated to service on February 9, 1945, the claim is now reduced to one only for time lost between August 8, 1944 and February 9, 1945.

Employe was dismissed from service "for insubordinate attitude and use of vile language to his superior in presence of other employes on Aug. 3, 1944."

Brotherhood first charges that Carrier violated Rule 31 in three respects:

1. Failure to inform employe of charges in writing.
2. Failure to hold the investigation within ten days.
3. Failure to render a decision within ten days after completion of investigation.

We believe the record shows that employe waived these provisions and was not prejudiced in any way because these rules were not technically followed. At the investigation employe knew that he was being charged with making vulgar remarks and insubordination to Track Supervisor. He made no protest of not having been informed in writing of the charges, and proceeded with the hearing without objection. In connection with the failure to hold a hearing within ten days, Brotherhood requested and was granted a continuance of the hearing, and made no objection that the hearing was not conducted in time. With reference to the failure of Carrier to render a decision within ten days after completion of investigation, the record shows that following the investigation on August 30th there were several exchanges of letters between Superintendent Hinshaw and General Chairman Plondke. What was stated or discussed in those letters we are not advised. Employe states in his submission, in this connection. "The claim was then appealed, etc. . . ." This would

seem to indicate that employe had notice of Carrier's decision within the ten days although the record is not very clear on this point. In the absence of a more definite showing as to what transpired, we do not believe Brotherhood has shown a violation of the rule in this regard.

Brotherhood further contends that there is no basis in the record for the discipline. It is clear that the record does not justify discipline for failure to obey orders. Employe was assisting in unloading chat ballast from a work train. Upon completion of the work of unloading the cars of chat ballast, Track Supervisor Morton signalled employe by motion of the hand to board the train, preparatory to its movement into side track at Kem. The Track Supervisor did not testify that employe saw the signal. Employe was 300 feet away and apparently looking at the Engineer when the signal was given. The discipline must be justified therefore entirely on the charge of vulgar remarks by employe to his superior. This, he concedes to have done. There can under no circumstances be justification for such conduct. However, the Supervisor was not very discreet in his conduct in charging employe, in the presence of his fellow employes, with not having kept his eyes open, without first ascertaining if there was just cause for him not to have seen the signal.

Although we do not condone, but rather disapprove of employe's conduct in using vulgar language toward his superior, we do not believe the record justifies the discipline meted out. Six months' loss of wages is too severe a penalty and is disproportionate to the facts disclosed. It is our opinion that the loss of one months' pay is adequate discipline for the offense committed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That discipline meted out by Carrier is disproportionate to the offense committed by employe and that one month's loss of pay is adequate punishment.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**INTERPRETATION NO. 1 TO AWARD NO. 3113
DOCKET MW-3073**

**NAME OF ORGANIZATION: Brotherhood of Maintenance
of Way Employees**

**NAME OF CARRIER: Chicago, Burlington & Quincy
Railroad Company**

Upon application of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In this award the Board held that the discipline meted out by Carrier was disproportionate to the offense committed by employe and that one month's loss of pay was adequate punishment.

Now through an interpretation, Carrier seeks to have deducted certain wages in contends Claimant earned in outside employment during the period of discipline. No claim was made for such an offset at the time of the original hearing before the Board. This Referee did not consider the propriety of such an offset or determine the effect of any rule of the Agreement in regard to such an offset because the issue was not discussed or argued before him.

Under the circumstances of this case, therefore, it is not now proper, through an interpretation, to consider this issue.

Referee Luther W. Youngdahl, who sat with the Division as a Member when Award No. 3113 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: H. A. Johnson
Secretary**

Dated at Chicago, Illinois, this 4th day of October, 1946.