

Award No. 5139

Docket No. MW-5119

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

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

(1) That the Carrier violated the effective agreement when it suspended Bridge and Building Mechanic S. C. Morgan from service beginning November 19, 1948, to and including December 2, 1948;

(2) That Bridge and Building Mechanic S. C. Morgan be paid the wage loss suffered because of this suspension and his seniority and personal record be corrected accordingly.

OPINION OF BOARD: Petitioner makes claim on behalf of S. C. Morgan, Bridge and Building Mechanic, because of wage loss suffered when he was suspended from service for the period beginning November 19, 1948, to and including December 2, 1948, on charges that he had absented himself from duty without permission. As a part of the relief sought, petitioner asks, also, that claimant's seniority and personnel record be corrected accordingly.

On review of the transcript of the record, it has been determined that the evidence supports the Carrier's decision that claimant was absent from duty without permission, but that the record is not sufficient to fully sustain the disciplinary action.

In the opinion of the Board, the Carrier's action in taking the aggrieved employe out of service, pending the hearing and decision, for a minor offense, was not warranted by a rule which permits the Carrier to suspend an employe before hearing and decision only "if the offense is considered sufficiently serious."

The Board holds that the Carrier acted arbitrarily, and abused its discretion, when it suspended the employe for having left his job not more than thirty minutes before quitting time, after advising one supervisor and getting his permission. The only offense committed was that the employe, in his apparent haste to get to a telephone, about 4:30 P.M., to call the office of the Collector of Internal Revenue before 5:00 P.M., pursuant to a past due notice which had miscarried in the mail, did not follow through and get the foreman's permission to leave early.

The evidence shows that the assistant foreman-lead mechanic, whose conditional approval was obtained, had been in charge of the crew most of the day; that the employe did make some effort to contact the foreman; that he was at the time in default, without blame, on summons to appear before the taxing authorities; and that the employe acted on a belief, not in itself unreasonable, that the foreman would excuse him under all the circumstances.

On the basis of the above and foregoing facts and circumstances, the Board has concluded that proper consideration has not been given to the mitigating circumstances present and that the employe's misconduct did not justify more than a reprimand at Carrier's hands.

Accordingly, the Board finds and determines that claimant's reinstatement date be November 19, 1948, with full seniority; that he be paid what he would have earned had he not been removed from service, less what he may have been paid for his services in other work, or through unemployment compensation; but that his plea for further and additional relief in accordance with his claim be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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 the Carrier, as shown by the Opinion, violated the Agreement.

AWARD

Claim (1 and 2) sustained to the extent provided in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1950.