

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**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 Bridge and Building Helper N. C. Kirkland was dismissed from the service of the Carrier without proper and just cause in violation of Article 22, Rule 2;

(2) That Bridge and Building Helper N. C. Kirkland be restored to service with seniority and vacation rights unimpaired and compensated for all wage loss suffered less what he may have earned in other work or through unemployment compensation.

OPINION OF BOARD: In the course of observing the manner in which an employe determined whether to use a thick or a cut washer on bolts in angle irons on a bridge structure, a foreman addressed the employe in billingsgate and he received a response from the employe, couched in the same tongue, and of equal warmth and virtuosity. The upshot was dismissal of the employe for insubordination.

There is evidence of unsatisfactory work performance on the part of the employe, but it comes from the foreman alone and in the heat of the mutual explosion that precipitated the dismissal.

Carriers have considerable latitude in the measure of discipline to be imposed. But according to ordinary standards of what is unreasonable, arbitrary and capricious, there may come a point at which the punishment does not fit the crime (Awards 4722, 3113, 2813 and 2139).

In the particular circumstances of this case, the employe should be restored to his position with seniority and accrued vacation rights unimpaired, but without back pay.

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 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

The Agreement was violated to the extent found in the foregoing Opinion.

AWARD

Claim sustained, but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1954.