

Award No. 13367
Docket No. CL-13583

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5180) that,

(a) The Carrier violated the Agreement when, effective at 10:00 A.M., March 22, 1961, E. L. Talley, Group 5 laborer, Sevier Transfer, Tennessee, was dismissed from the service of the Southern Railway Company, charged with failure to carry out instructions given by W. P. Davis, Platform Foreman, Sevier Transfer, Tennessee, same date.

(b) Claimant E. L. Talley shall be compensated for all wage loss March 22, 1961, to October 4, 1961, when he was restored to Carrier's service.

OPINION OF BOARD: The Claimant was dismissed from service for his failure to carry out the order of the Platform Foreman.

The Claimant was instructed to remove the flags and raise runways over tracks 2 and 3. He raised the lower run on track 2 and asked another employee to raise the east run on 2 track. His failure resulted in damage to a boxcar and a cross-over.

We find that the Claimant had a fair and impartial hearing. However, in view of his effort to carry out the order and since insubordination is not involved we believe the punishment to be excessive. We do not substitute our judgment for that of the Carrier. If we had heard the case the penalty may have been a 30 or 60 day suspension. We do believe that any penalty in excess of a 90 day suspension is excessive. The Claimant is restored to service beginning 90 days from March 22, 1961 and he shall be compensated for that period in accordance with the Agreement between the parties. Claimant is restored with all rights unimpaired.

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 the Agreement was violated.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.