



Award 1624I

Docket MW-16824

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

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

(1) The dismissal of Mr. B. A. Welch effective March 19, 1966 was without just and sufficient cause and in violation of the Agreement. (System Case No. PR-D-192327/10-D-235)

(2) Mr. B. A. Welch be restored to service with pay for all time lost and his record be cleared of the charge, all in compliance with Rule 19.

OPINION OF BOARD: This is a disciplinary case involving a section foreman. A vacancy had occurred on the property, which the Claimant section foreman maintained, because of his seniority, should have been awarded to him. It was allegedly awarded to a junior man. This evidently was the genesis of the matter now before us.

If a junior man was in fact, awarded the position in question, Claimant should have filed an appropriate action based on Carrier's violation of the seniority rule or some other rule of the basic Agreement. Instead, on advice of his Local Chairman, he submitted what he contends was a claim from February 1 to the 15th, 1966 for money he would have earned had he been awarded the new position. Such a "claim" was submitted on a form G-86, which is a pay-roll form and has nothing to do with claims as we understand them to be. Claimant is charged with the responsibility of knowing precisely how to submit a claim. He should have followed the usual procedure.

The evidence before us, however, militates against the proposition that Claimant was intentionally attempting to defraud the Carrier. He was advised by his Local Chairman to use form G-86, and although both the Local Chairman and the Claimant should have known better, we find that the discipline of dismissal was excessive. The time lost by the Claimant is sufficient discipline. We will hold that the Claimant shall be reinstated with seniority unimpaired but without reimbursement for wages lost.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 discipline imposed was excessive.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schuly
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1968.