

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railroad Company that:

(a) Carrier violated the intent of the Signalmen's Agreement when it dismissed Signal Helper F. J. Sadenwater from service on October 17, 1966, upon charges unproved, which action was unjust and unreasonable.

(b) Mr. Sadenwater be reinstated to his former position with seniority and all other rights unimpaired, his record cleared of the charges, and be paid for all time lost. (Carrier's File: 101.9-144 (Sig.))

OPINION OF BOARD: On September 30, 1966 Carrier notified Claimant to attend a hearing on October 6, 1966 on charge of violation of Rule O-2 of Rules of the Operating Department dated October 25, 1964. By agreement of the parties the hearing was advanced one day and held on October 5, 1966. On October 17, 1966, Claimant was notified that he was being dismissed from the service account violation of Rule O-2 of Rules of the Operating Department effective October 25th, 1964.

The gravamen of Petitioner's claim lies in the contention that evidence adduced at the investigation does not support the charge. It is evident, however, that Claimant was guilty. But the record discloses that there are extenuating circumstances which need to be considered.

On the basis of all of the facts in the record we conclude that dismissal from service was too severe a penalty. Claimant has now been out of service for nearly two years, which is a heavy and adequate penalty. He should be returned to service with all rights unimpaired, but with no compensation for lost time.

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 penalty of dismissal from service was too severe.

AWARD

That the Claimant be restored to service with all rights unimpaired, but without compensation for lost time.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1968.