

Award No. 16950
Docket No. MW-17787

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS TERMINAL RAILROAD COMPANY

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

(1) The dismissal of Laborer Robert H. Brown on January 19, 1968 was capricious, without just and sufficient cause and based upon unproven charges.

(2) The appeal presented by General Chairman M. C. Bradford in his letter* of February 11, 1968 should have been allowed as presented because President E. L. Keister failed to give a reason for his disallowance thereof.

(3) Laborer Robert H. Brown now be "reinstated" because of the violation referred to in Parts (1) and (2) of this claim.

(*) This letter will be quoted within the Employees' Statement of Facts.

OPINION OF BOARD: This is a discipline case. Claimant was dismissed from Carrier's service January 19, 1968, following investigation and hearing on charges of "two instances of insubordination" when he failed to quickly carry out the instructions of his foreman.

On February 11, 1968, Claimant's General Chairman wrote to Carrier's highest officer, asking "that the decision of Mr. Pearson be reversed and Mr. Brown be reinstated."

Careful study of the record shows that in all continuing correspondence between the parties it was the question of reinstatement alone which was asked and in turn denied.

The last sentence of Section 2, Rule 23-B of the December 1, 1966, agreement between the parties says:

"... With respect to claims and grievances involving an employee held out of service in discipline the original notice of request for reinstatement with pay for time lost shall be sufficient."
(Emphasis ours.)

We find that evidence in this case supports the conclusion that the claim was processed on the property, as claimed by Carrier, as a request for leniency, and that the provisions of Rule 23-A apply.

This Board has held many times (Awards 15566, 11914, 14800, 14601, 10789, 12104, 13117) that reinstatement on a leniency basis is solely within the discretion of the Carrier.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February 1969.