

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19733
Docket Number MU-19894

C. Robert Roadley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(St. Louis-San Francisco Railway Company

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

(1) The disqualification and subsequent termination of employment of B&B Foreman **J. S. Ward** was without just and sufficient cause (System File A-9359 F-11840).

(2) B&B Foreman **J. S. Ward** be returned to service with all rights unimpaired and that he be compensated for all wage loss suffered all in accordance with Rule 1 (**d**) of Article 4.

OPINION OF BOARD: Claimant was removed from service as B&B Foreman on December 26, 1971, as a result of his actions on December 23, 1971, because he allegedly "left his job without proper authority". At the **same time** he was informed that he could return to his former position of carpenter.

Claimant did not report for work as carpenter but requested a hearing under Section (b), Rule 1, Article IV. Hearing was conducted on January 11, 1972, a transcript of which has been made a part of the Record. On January 21, 1972, he was advised:

"This is to advise you that, as a result of the hearing held on January 11, 1972 to develop the facts for your being removed as foreman on B&B Gang 4 account allegedly leaving your job without authority and allowing your entire gang to leave the job without authority on Friday, December 24, 1971, you are hereby removed as foreman of B&B Gang No. **4.**"

Also, on January 29, 1972, claimant was advised:

"**You** have been absent from your job without authority and this absenteeism consists of **more** than 29 days.

"You have not applied for a leave of absence in line with the agreement. Therefore, **I** must advise you that your employment with the **Frisco** Railroad is terminated and your file is closed."

From our review of the transcript of the hearing, we find that Carrier was justified in removing claimant **from** the position of B&B Foreman. He clearly did not meet his responsibility as a foreman.

The matter of claimant's termination on January 29, 1972, for being absent without authority and not having applied for a leave of absence gives us concern. There was nothing contained in Carrier's notice of January 21, 1972, to claimant about returning to work as carpenter. In the hearing conducted on January 11, 1972, claimant stated that he did not want to lose his foreman's seniority rights and go back to working in the gang. In its submission the Petitioner contends that it was claimant's prerogative to accept work as a carpenter while pursuing his grievance under the grievance procedure and that claimant's decision not to accept the discipline can have no effect upon his employment relationship until it has been decided whether the discipline was warranted.

The Carrier has cited no Agreement rule under which **claimant** was required to return to work as carpenter upon his removal as foreman. We find, therefore, that claimant's termination on January 29, 1972, was improper. It is clear, however, that claimant's not working as carpenter since his **removal** as foreman was of his **own** volition. We award, therefore, that claimant be restored to the seniority rights held by him as carpenter prior to January 29, 1972, but without any compensation for time **out** of service.

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 Agreement was violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.