

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20887
Docket Number MW-21032

Lloyd H. **Bailer**, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

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

(1) The discipline of Maintenance Gang Foreman D. L. Pinkele (Disqualified as Foreman and Assistant Foreman. 10 days suspension, April 15 through April 26.) was improper, arbitrary, capricious and without just and sufficient cause (System File D-11-24-8).

(2) Claimant D. L. Pinkele be returned to his **former** position as maintenance **gang** foreman with seniority as such unimpaired and he be allowed eighty **(80)** hours of pay at the maintenance gang foreman's straight-time rate for the period April 15 through April 26, 1974.

(3) Mr. D. L. Pinkele also be allowed the difference between **what** he would have received at the maintenance gang foreman's rate and **what** he was paid at the **rate** of the position he occupied **beginning** April 27, 1974 **continuing** until he is returned to his former position as maintenance **gang** foreman.

OPINION OF BOARD: **Claimant** D.L. Pinkele, Maintenance Gang Foreman, was suspended for a period of ten days, and also **was** disqualified as a **gang** foreman and gang assistant foreman, due to Carrier having found him guilty of falsifying a rail report, bearing responsibility for sub-standard track repairs, and **failing to** protect Carrier's property **from** pilferage. There is evidence in the transcript of the formal investigation on the property which supports these **charges**. Claimant therefore engaged in serious failures to **properly** discharge his duties. Under the circumstances we are unable to find that the actions Carrier took against him constituted **an** abuse of its **discretion**.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

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

ATTEST: *A. W. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1975.