

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21087
Docket Number MW-21123

William M. Edgett, **Referee**

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Norfolk and Western **Railway** Company (Lake Region)

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

(1) The dismissal of Section Laborer Dock **Dingess** was without just and sufficient cause and in violation of the Agreement (System File **MW-BVE-74-101**).

(2) Claimant Dock **Dingess** shall now be restored to service with seniority, vacation and all other rights (such as coverage under CA 23000) unimpaired and that he be reimbursed for monetary loss suffered in conformance with Agreement **Rule** 22(e).

OPINION OF BOARD: Claimant habitually missed time from work and often failed to call in. He had been cautioned that he would be subject to investigation if he continued to do so. He received a corrected notice of investigation which the **employees** argue limited the scope of the investigation to several days in January. The original notice had referred to habitual absence and Carrier argues that the failure to repeat that reference in the corrected notice did not prejudice claimant. It is possible to read the two notices either way and it is true that the cause of clarity and certainty was not advanced by the ambiguity introduced by the corrected notice. The record shows that Claimant had been told that he would be subject to investigation, but it is not clear that he had been told that he faced separation from Carrier's service if he did not maintain acceptable attendance. He is a long service **employee** and that fact should be given appropriate weight. Under **all** of the circumstances of this case, Claimant should be restored to service, without pay for time 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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claimant should be restored to service without pay for time lost.

A W A R D

Claimant is to be restored to service, without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th **day** of May 1976.