

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21503**
Docket Number MW-21724

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The dismissal of R. L. **McMillen** was without just and sufficient **cause** and excessively disproportionate to the offense with which charged /System File 1-12 (116)/D-105869 E-306-141.

(2) Mr. R. L. **McMillen** shall be reinstated to service with seniority and all other rights unimpaired and payment allowed for all **time** lost as a result of said dismissal.

OPINION OF BOARD: Claimant was charged with making **false reports in connection** with time sheet submissions.

Subsequent to investigation, Claimant was dismissed from service.

We have carefully reviewed the entire record, including the February 13, 1975 transcript of investigation, and find that none of Claimant's substantive rights were violated. The record shows that Claimant had been employed for about six (6) years at the time of the incident. Although he was not a qualified foreman (having previously failed to qualify for the position) he was instructed by the regular foreman to serve as foreman for two (2) days.

On January 31, 1975, Claimant and the other members of "his" **gang** left work nearly three (3) hours **early**, however, no effort was made to show that this was reflected on the time sheets.

We do not question **that** disciplinary action was warranted, but under the circumstances of this record, we feel that permanent dismissal was excessive. Claimant shall be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of service.

FINDING: 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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.

