

NATIONAL RAILROAD ADJUSTMENT BOARD

TMRD DIVISION

Award Number 21709
Docket Number MW-21814

John P. Mead, Referee

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

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

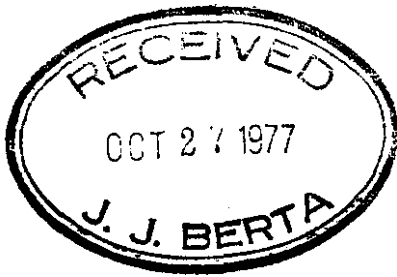
(1) The dismissal of Track Repairman James I. Dunn by letter dated March 10, 1975 was without just and sufficient cause and was wholly disproportionate to the offense with which he was charged (System File 1-12(115)/D-105870E-306-18).

(2) The claimant shall be reinstated to the service with all seniority rights unimpaired and with pay for time lost as per the first paragraph of Agreement Rule 27(f).

OPINION OF BOARD: Claimant was dismissed from his employment as Track Repairman on March 13, 1975, for violation of Rule 56 of Carrier's Rules and Instructions of the Maintenance of Way Department. Rule 56 provides, in effect, that trains approaching a Conditional Stop track sign will be cleared to pass only by the foreman named in Form W Train Order.

On the day of the incident resulting in claimant's dismissal, the foreman named in the Form W was putting up radio flags identifying the work area and was unable to communicate with a train requesting clearance. Claimant heard the train's radio request and cleared it, using his own name. Soon thereafter he started to clear a second train, but the authorized foreman made contact and gave the clearance.

Claimant did not deny that he acted without authority, but contended that his dismissal was without just and sufficient cause, and wholly disproportionate to the offense with which charged. His principal reasons for so contending were that (1) he was trying to help his foreman (2) he did not try to deceive anyone, and (3) others have done the same thing with impunity. The evidence in the record clearly supports (1) and (2), and tends to support (3). Nevertheless, claimant demonstrated extremely poor judgement in performing an unauthorized action which could have entailed serious consequences. At the time he cleared the first train and attempted to clear the second, his foreman had not completed the placement of flags at the outer limits of the area covered by the Form W Order, so claimant could not have known that the track was clear.



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Disciplinary action was justified, but the Board concludes that dismissal was too severe in light of the claimant's good intentions and openness. The Board believes that the Carrier's disciplinary action will have served its purpose by now reinstating claimant in employment status without back pay. Seniority and all other rights should be fully restored, but the disciplinary action should remain in his record.

References in the record to Claimant's post-termination conduct were considered by the Board to be irrelevant to the charges upon which the dismissal was based.

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

Disciplinary action was justified but the penalty of dismissal was excessive.

A W A R D

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.