

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22001

Docket Number MU-21980

Dana E. Eischen, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Detroit, Toledo and **Ironton** Railroad Company

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

(1) The dismissal of **Trackman** M. J. Dunn and the suspension of **Trackmen** R. L. Leapley and W. W. Sternbergh following investigation held on November 12, 1975 on charges of violation of Agreement Rules 17(a), 18 and **18-1/2** were without just and sufficient cause and on the basis of unproven charges.

(2) **Trackmen** M. J. Dunn, R. L. Leapley and W. W. Sternbergh shall each be allowed the benefits prescribed **in** Agreement Rule 34(e).

OPINION OF BOARD: This case involves three (3) separate assessments of discipline to three (3) **Trackmen** following three (3) separate hearings.

Trackman M. J. Dunn was dismissed from Carrier's service following a hearing relative to his unauthorized absence from his assignment on thirty-seven (37) occasions between January and October, 1975.

Trackman Ray Leapley was assessed a ten (10) day suspension from service following a hearing relative to his unauthorized absence from his assignment on twenty-seven (27) occasions between March and October, 1975.

Trackman William Stembergh was assessed a ten (10) day suspension **from service following a** hearing relative to his unauthorized absence from his assignment on seven (7) dates during September and October, 1975.

Petitioner has advanced the procedural contention that all three of these instances of discipline have been prejudiced by the fact that the same hearing officer made the charges, conducted the hearings and assessed the discipline.

We have examined both the record of this case and the applicable Rules Agreement involved and can find no prohibition against the same Carrier Officer acting in such a multiple capacity. While such a procedure can, in some circumstances, lead to a prejudicial action, we are not persuaded in the particular facts and circumstances of this case that any of the claimant's due process rights were violated. That objection, therefore, is rejected.

The hearing records contain substantial probative testimony to show that the three claimants were less than sincere in their attendance at their assigned positions notwithstanding the fact that they had been previously warned relative to such conduct. Discipline was clearly justified.

The assessment of a ten (10) day suspension to Claimants Leapley and Sternbergh was **not** arbitrary or excessive. Their claims are denied.

The assessment of **dismissal** in the case of Claimant Dunn causes us **some** concern. While repeated absences from duty can, and often do, result in permanent dismissal, we are persuaded, in this case, that one more **chance** is warranted. This is done with the clear **warning** to Mr. Dunn that a repetition of this type of behavior is totally unacceptable and need not be tolerated by the Carrier. This is his last chance to show that he does, in fact, desire to continue as a railroad **employee**.

Therefore, Claimant Dunn should be returned to service, subject to **successfully** passing the necessary physical examinations required in such circumstances, with seniority unimpaired, but without any payment for the time he has been out of service.

FIXDINGS: 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 Employee 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 with respect to Claimants Leapley and Stembergh.

That the discipline imposed upon Claimant Dunn was excessive in the circumstances.

A W A R D

Claims of R. L. Leapley and W. W. Sternbergh are denied.

Claims of M. J. Dunn sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1978,