

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22523
Docket Number MW-22671

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation

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

(1) The dismissal of Rail Gang Foreman John S. DiNoto, Jr. in all capacities was without just or sufficient cause, on the basis of unproven charges and was extremely disproportionate to the charges placed against him.

(2) Claimant DiNoto shall be restored to service with seniority unimpaired and his personal record shall be cleared of the charges placed against him."

OPINION OF BOARD: On May 5, 1977, claimant was assigned as foreman of the first trick rail laying gang. The Carrier alleges that on the date involved, claimant failed to follow instructions of his supervisor, as a result of which he was removed from the service and instructed to appear at a formal trial. The charge against the claimant alleged violation of Rules I, J, K, and Y of the National Railroad Passenger Corporation General Rules of Conduct.

The trial was scheduled to begin on Monday, May 16, 1977, but, by agreement, was postponed to May 25, 1977. The claimant was present at the trial and was represented by a duly accredited representative of the Organization. On May 31, 1977, he was formally notified of his dismissal from service.

The Board has carefully reviewed the entire record, including the transcript of the proceedings of May 25, 1977. We find that none of claimant's substantive procedural rights was violated. There was substantial evidence in support of the charges against him. Our recent Award No. 22469 upheld a 60 day suspension against claimant for violation of Rules I and Y.

There is no proper basis for this Board to interfere with the discipline imposed by the Carrier.

In view of our decision on the merits of the dispute, we have not found it necessary to pass upon the procedural issues raised.

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.