

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22528  
Docket Number **MW-22714**

Paul C. Carter, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(St. Louis-San Francisco **Railway** Company

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

(1) The dismissal of Trackman-Driver E. J. Bamett was without just and sufficient cause and **exceedingly** disproportionate to the offense with which charged (System File B-1103).

(2) **Claimant Barnett** shall be reinstated to service and extended **all** other benefits and remedies prescribed in Rule **91(b)(6).**"

OPINION OF BOARD: Claimant had about seven years' service with the Carrier. On October 7, 1977, he was working as a **trackman-driver**, Track Gang No. 130. On that date the **Roadmaster** instructed the foreman in charge of the gang to work the entire gang on the following day, Saturday, October **8**, 1977. The gang was working with the Sperry Rail Car, changing out rail behind the test car. The foreman informed all the **members** of the gang, including the **claimant**, instructing them to report at 7:00 A.M. the following day.

The claimant informed the foreman that he may not be able to work on Saturday, October 8. The **foreman** did not give him permission to be absent, but told him to call the Roadmaster, who had instructed the foreman to have all **members** of the gang work on the day involved.

The claimant did not call the Roadmaster, nor did he report for work on October **8**. When he reported for work on October 10 the foreman removed him from the service. Upon request of representative of the Organization, a formal investigation was conducted on October 25, 1977. On November 2, 1977, claimant's dismissal from service was **confirmed** by the Division Engineer. On a number of occasions following claimant's dismissal, the Carrier offered to restore him

to the service on a leniency basis, without pay for time lost.  
Each such offer was declined.

We have carefully reviewed the entire record, including the transcript of the **investigation** conducted on October 25, 1977. Discipline was warranted; however, permanent dismissal **was** excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without compensation for time lost while out of service.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated **in** the Opinion and Findings.

NATIONAL RAILROAD **ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: *A. W. Paulus*  
Executive Secretary

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

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