

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22796
Docket Number **MW-22900**

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(**St. Louis Southwestern Railway Company**)

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

(1) The Carrier violated the Maintenance of Way Agreement, especially but not limited to Rule 6 - Discipline and Grievances, when B&B Painter **J. P. Parker** was unjustly dismissed (System File **MW-78-4-CB/53-655**).

(2) B&B Painter **J. P. Parker** be now reinstated to his former position with pay for all time lost and with vacation, seniority and all other rights unimpaired. Also that this charge be stricken from his record."

OPINION OF BOARD: Claimant was a painter in Carrier's B&B Gang No. 6 and *had* been in the service of the Carrier some nine or ten months. **He** was absent from duty on February **16** and 17, 1978, without proper authority. He was dismissed from service by the B&B Supervisor by letter dated February 22, 1978.

Following his dismissal, claimant **immediately** requested a hearing in accordance with the provisions of the applicable Agreement. The hearing **was** conducted on March 8, 1978, and on March 18, 1978, claimant was notified that his dismissal was sustained. A copy of the transcript of the hearing has been made a part of the record.

The Board has carefully examined the transcript of the hearing, and it seems significant that Carrier did not question claimant during the course of the hearing as to the reason for his absence on February 16 and 17, 1978. The **claimant** testified in the hearing that at the time the **Supervisor** gave him the letter of dismissal he gave no explanation **as** to the reason **for** such action.

In its submission to the Board the Carrier brings out the fact that the claimant had been arrested on February 15, 1978, and was in jail on **February** 16-17 on charge of possessing a controlled substance; was released on bond to his attorney on February 17, 1978; later pleaded guilty and was placed on a three-year probation. In reviewing the correspondence covering the handling of the dispute on the property, we do not **find** where the matter of claimant having been arrested and in jail on February 16-17, 1978, **was** mentioned by the Carrier, although the on-property handling extended over a period of several months.

Claimant's actions justified severe discipline. However, **based** on the record, the Board is of the considered opinion that the **time** that **claimant** has been out of service should constitute sufficient discipline for the offense. We will award **that** claimant be restored to the service with seniority **and** other rights unimpaired, but without compensation for time lost while out of the service. **Claimant** should clearly understand, however, that the purpose of this award is to give him one last chance to become and remain a responsible **employee**, and that further major infractions by him will result in the permanent *termination* of his services.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Opinion and **Findings**.

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

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.

