

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22797
Docket Number **MW-22914**

Paul **C.** Carter, Referee

(Brotherhood of Maintenance of Way **Employes**

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company

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

(1) The dismissal of Foreman **Ira L. Toland**, Jr. was without just and sufficient cause, unwarranted and on the basis of unproven charges (Carrier's File 013.31-198).

(2) Foreman **Ira L. Toland**, Jr. shall be reinstated and compensated for all wage loss suffered in accordance with Rule **13-2.**"

OPINION OF BOARD: Claimant, with about nine years of service, was employed by the Carrier as foreman of Section **015**. **He** was working under the supervision of Roadmaster W. R. **Mapes** on the **date** of the occurrence out of which the present dispute arose: On October 17, 1978, claimant was dismissed from service by Roadmaster **Mapes** by letter reading:

'You are hereby dismissed from the service of the **Kansas** City Southern Railway Company, effective immediately, for your conduct toward law enforcement officers at or near Carl Junction, Missouri on October 11, 1978 in violation of Rule **'N'** of the Maintenance of Way and Signal Department Rules and Regulations effective December 1, 1973.

"Arrange to turn in all company equipment, keys and reports **now** in your possession."

On the same date, October 17, 1978, claimant was instructed to attend investigation on October 26, 1978, to:

".... ascertain the facts and determine your responsibility in connection with violation of Rule **'N'** of the Maintenance of Way and Signal Department Rules and Regulations effective December 1, 1973 occurring at approximately 1:00 PM on October 11, 1978 at intersection of Highways 171 and **'Z'** Highway near Carl Junction, Missouri."

The investigation was conducted as scheduled, following which, on November 14, 1978, claimant was advised by the Division Engineer that his "dismissal from the service of this Company is reaffirmed." A copy of the transcript of the investigation has been made a part of the record. A review of the transcript, and the appeal of the dispute on the property, shows that none of claimant's substantive procedural rights was violated. The investigation was thorough and was conducted in a fair and impartial manner. While there were **some** conflicts in the testimony, it is well settled that this Board will not attempt to resolve conflicts in testimony, weigh the evidence, or pass upon the credibility of witnesses. These functions are reserved to the Carrier.

Carrier's **Rule "N"** of the Maintenance of Way and Signal Department **Rules and** Regulations, effective December 1, 1973, referred to in the letter of dismissal and letter of charge of October 17, 1978, reads in part as follows:

"N. Courteous deportment is required of all **employees** in their dealings with the public, their subordinates and each other."

Without detailing all the evidence adduced at the investigation, suffice it to say that there was substantial evidence in support of the charge against the claimant. The Carrier's action in imposing the discipline that it did was not arbitrary, capricious or in bad faith. There is no proper basis for the Board to interfere with the discipline imposed.

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.

Award Number **22797**
Docket **Number MW-22914**

Page 3

A W A R D

Claim denied.

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

ATTEST:;


Executive Secretary

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