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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22064
Docket Number M-22877

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 Foreman Melvin Pye was without just or sufficient cause and on the basis of unproven charges (System File F-12277).

(2) The **claimant** shall be restored to his **former** position as foreman with seniority **and** all other rights as such unimpaired and he shall be compensated for all wage loss suffered, all in accordance with **Rule 91(b)(6).**"

OPINION OF BOARD: Claimant had been in Carrier's service about twenty-eight years. He was last employed as District Gang Foreman, Gang No. 720, **Hugo**, Oklahoma. He was dismissed from service on March 21, 1978, for the unauthorized removal of cross ties from Carrier's property and selling them. Following his dismissal, a formal investigation was conducted on April 14, 1978. A transcript of the investigation has been made a part of the record.

It appears from the record that a siding had been removed from service at Boswell, Oklahoma, during July, 1977. The removal of the ties occurred during March, 1978. In the investigation the claimant admitted that he and a laborer had removed **some** ties from the Carrier's right-of-way and sold them, but contended that a **former Roadmaster** had given him permission to get some of the ties **when** they started taking up the track. He admitted that he did not seek permission from the **Roadmaster** who had been assigned to the territory **some** six or eight months. The Carrier did not offer any evidence to refute or rebut the **claimant's** contention that he had received permission from the **former Roadmaster** to remove some of **the ties**.

During the handling on the property it was agreed to restore claimant to service as a **trackman**, without prejudice to the Petitioner's right to continue to **handle** the claim for pay for time lost **and** restoration of his foreman's seniority. However, the claimant contended that he could not perform the work of a **trackman** due to his physical condition.

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The Board is of the opinion that **claimant** should have obtained permission from the officers in charge at the time he removed the ties. **However**, based upon the entire record we are of the considered opinion that while discipline was warranted, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without pay for time lost, provided that he can pass satisfactory return-to-work physical examination. Claimant should understand, however, that the purpose of this award is to give him one last chance to **become and** remain a responsible **employe and** that future **major** infractions 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 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

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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1980.