

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23236
Docket Number MW-23234

Joseph A. Sickles, 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 discipline imposed upon Foreman T. J. Berkley 'for not picking up material at work site on January 31, 1979' was without just and sufficient cause, on the basis of unproven and disproven charges and in violation of the Agreement (System File B-1642).

(2) Foreman T. J. Berkley shall be afforded the remedy prescribed in Article 11, Rule 91(b) (6)."

OPINION OF BOARD: The Claimant was instructed to report to an investigation to develop facts concerning his dismissal from service for allegedly failing to perform certain work as directed in violation of rules which prohibit negligence, indifference, insubordination, dishonesty, etc.

Subsequent to the investigation, the Carrier confirmed that the Employee was guilty, however, ultimately, his termination from service was reduced to a suspension, and he was restored to service after an absence of approximately 90 days.

The Claimant asserts that he was removed from service on the day in question for allegedly failing to remove 9 scrap track spikes from the work site, although the Carrier contends that the removal from service was for a broader spectrum of activities.

Our review of the record shows that the Carrier sought to take action against this Employee based upon his activity on January 31, 1979, and we find there was a basis for said action, inasmuch as the Employee failed to see to his performance of duties in a proper manner. However, we will concede that the investigation sought to extend matters far beyond the charges properly served, and the investigation attempted to explore many areas not material to the investigation.

Under all the circumstances, we feel that a 90 day suspension was excessive, and we will only approve a 30 day suspension.

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 Employee 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 was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.