

NATIONAL RAILROAD ADJUSTMENT BOARD

TRIED DIVISION

Avari Number **23254**
Docket Number **CL-23366**

Paul C. Carter, Referee

PARTIES TO DISPUTE: ((Brotherhood of **Railway, Airline and Steamship Clerks,**
(**Freight Handlers, Express and Station Employees**
(**Missouri-Kansas-Texas Railroad Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-9278**) that:

(1) The Missouri-Kansas-Texas Railroad Company **violated** the current **Rules Agreement** between the parties (**DP-451**), **including** but not **limited** to **Rules 26, 27 and 33**, when it arbitrarily and capriciously **dis-**
missed Mr. P. S. Hinds, Clerk, **Bellmead Yard, Waco, Texas**, from its service on **April 5, 1979**, without **just** and sufficient **cause** and then failed to prove its charges in the record of the investigation.

(2) Carrier shall be required to **reinstate** Clerk **P. S. Hinds** to its service **with** his seniority, vacation, insurance and all other **employee** rights **restored** unimpaired and pay **him** for all time **lost** commencing with **April 5, 1979**.

OPINION OF BOARD: **Claimant** had a seniority **date of March 13, 1972** and was the regular occupant of **EDP Clerk Position** with assigned hours **11:00 PM to 7:00 AM, Tuesday through Saturday**. He was verbally removed from the service by the **Trainmaster** about **12:01 AM, April 5, 1979**. He was advised by letter **dated April 5** from the Superintendent that he was **dismissed** from the service for **violation** of the **Uniform Code of Safety Rules**.

In the letter of **April 5, 1979**, from the Superintendent, it was **alleged that claimant was transporting a conductor and brakeman in an automobile from Bellmead Yard Office to the south end of Bellmead yard**; that the automobile was **allegedly** operated at a **high** rate of **speed**, struck a switch stand, as well as the side of **Train No. 106**; the automobile turned over, causing damage to equipment and also personal injuries to the conductor **and brakeman**.

The claimant requested a formal investigation under the **Agreement**, which investigation was scheduled for **April 18, 1979**, postponed and held on **April 20, 1979**. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript **shows** that none of claimant's **substantive** procedural rights was violated. There was substantial **evidence** adduced at the investigation to warrant **disciplinary** action

against the claimant. However, the Board considers permanent **dismissal** excessive. The time that **claimant** has been out of **service** should serve as sufficient **discipline**. We **will award** that **claimant** be restored to the **service, with seniority** and other **rights** unimpaired, but without any **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 was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, **Illinois**, this 15th **day** of April 1981.

