

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 23346  
Docket Number **MW-23351**

Paul C. **Carter**, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employes**  
(Chicago, Milwaukee, St. Paul and Pacific **Railroad Company**)

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

(1) The dismissal of Laborer Lindsay **K. Waldrop** for alleged violation of 'Rule **700** and **M-702**' was without just and sufficient cause, on the basis of unproven and disproven charges and was wholly disproportionate to the charge leveled against him (System File **C#134/D-2227**).

(2) **Laborer** Lindsay **K. Waldrop** shall be reinstated with seniority and all other rights unimpaired **and** shall be compensated for all wage loss suffered."

**OPINION OF BOARD:** **Claimant was** employed as a section laborer in Carrier's **Maintenance** Gang No. **4227**, with about four years of service. He was dismissed from the service by the foreman for failing to protect his **assignment** on August 16, **1978**, and being absent without permission. He requested a hearing, **in** accordance with the Agreement, which **hearing** was held on September 8, **1978**, and his dismissal was affirmed on September 18, **1978**, however, in the **same** letter the Carrier offered to restore claimant to service on a leniency basis without pay **for time** lost, which offer was rejected. An appeal hearing on the discipline was held on October **12, 1978**, and a decision on the appeal hearing was rendered on October **19, 1978**, at which time the Carrier again offered to restore claimant to the service without pay for time lost. Another offer to restore claimant to **service** without pay for **time** lost was made on **January 23, 1979**.

Under the rules in effect on this property, we conclude that the claim is properly before the **Board**. **Claim for pay for time lost** was initiated within sixty days from **the** decision on the appeal hearing under the discipline rule.

The **Board has** carefully reviewed the entire record in the case, including the transcript of the investigation or **hearing** conducted on September 8, **1978**. We **find that none** of claimant's substantive **procedural rights** was violated. He was present throughout the investigation and was represented. **The** discipline rule of the agreement gave claimant the right to call witnesses to testify in his behalf.

Eased on the entire record, discipline was warranted; however, ~~permanent dismissal~~ was excessive. We will award that ~~claimant~~ be restored to 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 ~~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

*A. W. Paulsen*

Executive ~~Secretary~~

Dated at Chicago, Illinois, this 14th day of August 1981.

