

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23505  
Docket Number MW-23876

Paul C. Carter, Referee

**PARTIES TO DISPUTE:** { (Brotherhood of Maintenance of Way Employees  
{ Consolidated Rail corporation

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

(1) The dismissal of Machine Operator Robert J. Brown for allegedly **absenting** himself from duty without proper authority on **March 22, 1978** was without just and sufficient cause and on the basis of **unproven** charges (System Docket 380).

(2) Machine Operator Robert J. Brown 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 Machine Operator with Rail Gang No. 370. He was notified to attend trial on August 31, 1978, on the charge:

"Rule T, Rules for Conducting **Transportation**,  
Paragraph 2:

"No employee will be allowed to absent **himself** from duty without proper authority nor **will** any employees be allowed to engage a substitute to perform **his** duties.

"Absent **from** March 22, 1978 to present."

The **trial** was held **as** scheduled, following which claimant was notified on September **14, 1978**, of his dismissal **from** service. A copy of the transcript of the trial has been made a part of the record. A review of **the transcript shows** that none of claimant's substantive **procedural** rights was **violated**. Claimant was present throughout the trial **and** was represented.

A review of the **transcript** of the trial shows that discipline was warranted and **justified**. However, the **time** that **claimant has been out of the service** should constitute sufficient discipline. We will award that **claimant** be restored to the service with seniority rights unimpaired, but **without** any **compensation for time lost**.

**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 permanent dismissal 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 29th day of January 1982.

