

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23978
Docket Number MW-24030

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Houston Belt and Terminal Railway Company

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

(1) The dismissal of Trackman J. L. Lenton for 'failure to protect* his 'assignment about 3:30 p.m., December 19, 1979' was without just and sufficient cause and wholly disproportionate to the offense with which charged.

(2) Trackman J. L. Lenton shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered including holiday pay."

OPINION OF BOARD: The Claimant, J. L. Lenton was hired by the Carrier on September 18, 1978 in its Maintenance of Way Department as a Track Laborer. On January 10, 1980 a formal investigation was held into the matter that the Claimant on December 19, 1979 failed to protect his work assignment. Claimant was found guilty of leaving his assignment without permission and was dismissed from service. In conference on September 12, 1980, Carrier's Director of Labor Relations offered reinstatement on a leniency basis, without pay, to Trackman Lenton and Trackman LaVergne, also involved in same incident. Claimant Lenton refused the offer.

The Carrier maintains that on December 19, 1979 Trackman Lenton left his assignment without permission even though he knew that an emergency existed due to a broken rail. Claimant knew and had observed the proper "mark off" procedures, but in the instant case he merely walked off from his job without permission or notifying Foreman Hunt. Testimony by Foreman Hunt states that all of the men on his gang heard him say that they were going to work overtime and that Trackman Lenton did not ask permission to be off. Foreman Hunt further testified that Trackman Lenton had always performed overtime in the past when he was requested unless Claimant had permission to Set off.

The Claimant maintains that he was not required nor asked by Foreman Hunt to perform overtime services. Testimony by Lenton states that he informed Foreman Hunt that he was not able to work overtime because he did not have a ride home. Since Foreman Hunt made it clear that he did not care if Claimant worked or not and had instructed Claimant to talk to Supervisor Blakley, Claimant felt that he was given an option and not constrained to perform overtime. Claimant testified that had he been instructed to remain at the work site and informed as to the urgency of the work, he would not have left. Further Claimant testified that he had never refused overtime services in the past and that Foreman Hunt fully understood that Claimant was leaving the property.

Upon careful consideration of the record herein the Board concludes that dismissal in this case is excessive. There is substantial evidence in the record which supports the conclusion that Claimant did not have a full understanding that he was being ordered to work overtime. The Board further notes the Claimant's heretofore unblemished work record and the fact that Claimant testified that if he had understood that he was being ordered to work overtime, he would have complied with this order. Accordingly we hold that Claimant shall be reinstated Without backpay and with seniority and all other rights unimpaired.

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.

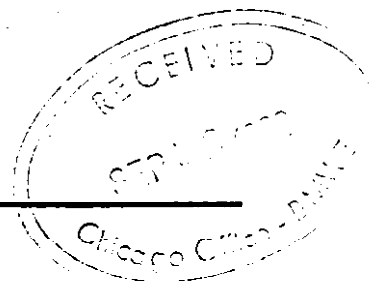
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By

Rosemarie Brasch

Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 27th day of August 1982.