

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24013
Docket Number MW-23702

Josef P. Sirefman, Referee

[Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(Missouri Pacific Railroad company

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

(1) The dismissal of Trackmen W. R. Cooley, R. G. Conway; G. O. Deaner, A. Everette, Jr., D. L. Harden, N. L. Harding, T. D. Harris, W. Hanson, A. L. Hervey, B. J. Hopkins, J. B. Jackson, J. C. Johnson, I. W. Jones, R. L. Jones, L. E. Leapheart, C. Meabon, Jr., S. L. Moore, C. Parker, B. W. Pilgrim, G. Wheeler, D. R. Walls and L. White for alleged 'failure to comply with instructions to report for work on System Gang 6801 on March 3 and 4, 1979 and violation of General Rule B' was without just and sufficient cause and in violation of the Agreement (carrier's File S 310-281).

(2) The claimants shall be compensated for all wage loss suffered including any overtime worked by System Rail Gang 6801 beginning March 5, 1979 and Trackmen W. R. Cooley, T. D. Harris, S. L. Moore, L. White and R. L. Jones shall be reinstated with seniority and all other rights unimpaired."

OPINION OF BOARD: The twenty-two Claimants herein, all Trackmen, were relieved of their duties on March 5, 1979 "pending investigation for (their) failure to comply with instructions to report for work on System Rail Gang 6801 on March 3 and 4, 1979". An investigation was held on March 13, 1979 "to develop facts and place responsibility, if any, in connection" therewith. The Claimants were dismissed from service on March 19, 1979.

A review of the record before this Board establishes that claimants were notified by supervision that they were to report for duty on March 3 and 4, 1979, and that they failed to do so. The Organization contends that the direction to work on those days violated a November 30, 1978 Letter of Agreement between the Carrier and the Organization concerning a shift in rest days. Under this position Claimants should have followed the time honored, widely accepted doctrine of work now-grieve later. Instead their massive defection from supervisory instructions constituted an extreme form of insubordination. There was substantial evidence to sustain the Carrier's decision to discipline Claimants. As seventeen of the Claimants were reinstated on a leniency basis, and another who was probationary was re-employed by the Carrier the issue of penalty is moot. With respect to the four remaining Claimants the penalty of dismissal was reasonable.

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 Agreement was not violated.

A W A R D

claim denied.

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 20th day of October 1982.

