

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24257  
Docket Number MW-24356

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The dismissal of **B&B** Carpenter Richard **Andress**, Jr. for alleged insubordination on October **13, 1980** was without just and sufficient cause and on the basis of unproven charges (System File **MW-80-185**).

(2) **B&B** Carpenter Richard **Andress**, Jr. shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Richard **Andress**, Jr., the **Claimant**, was employed by the Carrier as a carpenter in the Bridge and Building Sub-department.' As a result of his actions on October **13, 1980**, Claimant was dismissed from service for violation of Rule **801** in that he was insubordinate.

The Organization argues Claimant did not refuse to **comply** with instructions and Carrier has failed to meet its burden of proof. According to the Organization, no evidence exists **to show** Claimant intended to **resist** authority, and the record does not justify the discipline assessed nor the charge of insubordination.

The Carrier contends the evidence adduced at the hearing proves the Claimant guilty as charged. **Carrier** notes Claimant was clearly issued instructions, which he did not follow. This Board agrees. **Furthermore**, with respect to any concern for safety by Claimant, the Board concurs with Carrier that any remedy lay in the grievance procedure. Claimant's responsibility was to **comply** with the instructions, a principle which is the essence of every Collective Bargaining Agreement. The transcript also indicates the exchange between Claimant and his foreman concerning going off the **timeroll** was less than clear. **Under** such circumstances, we cannot agree Claimant was duly warned that going off the clock would subject him to discharge. While the Board will not condone any failure to follow instructions, in light of the above, we consider the penalty of discharge to be **excessive**. Claimant's time off will be considered a suspension and he is forewarned future acts of non-obedience will not be tolerated. Claimant is to be reinstated with his seniority rights intact, but without back pay.

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 23rd day Of March 1983.

