

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24464**  
Docket Number **MW-24171**

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ St. Louis Southwestern Railway Company

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

(1) The dismissal of Track Apprentice C. A. Lucas for insubordination was without just and sufficient cause and wholly disproportionate to the charge leveled against him (System File **MW-80-26-CB/283-74-1/2-A**).

(2) Track Apprentice C. A. Lucas shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a track apprentice with three years of service, was usually assigned to operate a truck at Pine Bluff, Arkansas. Because Claimant's truck **was** being repaired on **March 10, 1980**, his Foreman assigned him to perform laborer's duties with the rehabilitation gang. Though Claimant did perform those duties during the first half of his shift, he flatly refused to return to work with the gang in the afternoon. Both his Foreman and the General Foreman ordered Claimant to **resume** working with the rehabilitation gang. **Claimant** again refused and stated that he was entitled to be assigned to a **more** preferential or more desirable assignment. **Claimant was** dismissed from service.

Pursuant to his request, the Carrier held an investigation on April 17, **1980** to determine if Claimant violated Carrier Rules 801, 802 and 810. At the investigation, **Claimant** testified that, by assigning him to laborer's work, his Foreman **was** harassing him.

This Board concludes that **Claimant was** insubordinate. Claimant conceded that he failed to follow his supervisors' direct orders. If Claimant sincerely believed that the orders were contrary to the applicable Agreement or that he had been unfairly treated, Claimant should have first complied with the instructions and then utilized the contract grievance machinery to redress any Carrier violations.

While we find that **Claimant** was insubordinate, the penalty assessed in this case, **was** excessive and unduly harsh. Apparently, Claimant had a good prior work record. Thus, Claimant will be reinstated to service with his seniority unimpaired 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 14th day of **July** 1983.

