

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24573**
Docket Number NW-24783

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Welder K. V. Tyre for alleged violation of Agreement Rule 17(b) and Carrier's Rule "G-1" was **excessive** and wholly disproportionate to the charges **levelled against** him [System File 37-SCL-81-15/12-39(81-28) G].

(2) The claimant shall be reinstated with seniority and all other rights **unimpaired** and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Prior to his dismissal, Claimant was employed by the Carrier as a welder, with about five years of service. At the time of the **occurrence** giving rise to the claim herein, Claimant was under the supervision of Roadmaster H. Aashlor.

On March 16, 1981, Claimant was assigned as a welder on Gang No. 9221 at Fitzgerald, Ga., with a four-day work week of ten hours per day. When he left the work site on Thursday afternoon, **where** he had been making field welds, he was instructed to return to Fitzgerald the following Monday and finish a rail joint at that location. **He** was also instructed to contact the **dispatcher** and obtain the necessary "Y" orders **for the** safe passage of trains and for the **protection of employees performing rail work** in progress on the tracks. Claimant arranged for the necessary "Y" orders.

On March 20, 1981, Claimant was charged:

"On Monday March 16, 1981, you did not protect your assignment on **welding** gang 9221 **which** you had a 'Y' order out in your name.

As **result** of you not protecting your assignment on Monday March 16, 1981, you are hereby charged **with** violation of 17 'B' of the current agreement between Seaboard Coast Line Railroad and Maintenance of Way Employees. Also you **are** charged with that portion of Rule G-1 of the Book of Operating Rules which reads as follows: ' _____ incompetency, **willful** neglect, _____ will subject the offender to dismissal.'

"A hearing will be conducted in the **trainmaster's** office in Cordele, Ga., on Tuesday, March 24, 1981, at **1:30 P.M.** at which time you **will** be present to answer the **charges**. You may be represented by the duly accredited representative of the **Employees** and may have present any witnesses who have knowledge of this incident. It will be your responsibility to arrange for the presence of your witness. Your personal record will be subject to review in the hearing."

~~"The hearing was conducted as scheduled and on March 31, 1981, Claimant~~ was dismissed from the service. A copy of the transcript of the hearing, or investigation, has been made a part of the record. The hearing, or investigation, was conducted in a fair and impartial **manner**. None of Claimant's substantive procedural rights was violated.

In the hearing the Claimant testified that between **5:30** and 6:00 a.m., on Monday, March 16, 1981, he received a telephone call from a person with whom he apparently had, or was having, some real estate dealings, that it was necessary ~~that~~ they see an attorney that day about a tax situation; that he attempted **three** times between **7:30 A.M.** and **8:15 A.M.** to telephone the **Roadmaster**, but was unable to get an answer. He admitted, however, that he made no attempt **through** the Dispatcher, or anyone in authority, to annul the **"Y"** order. He insisted, however, that he attempted to call the Roadmaster at the latter's office, where he usually called him.

If ~~the~~ **Carrier** is going to hold **employees responsible** for not calling **their** supervisors, then it would only seem proper that the Carrier have someone available at the supervisor's usual calling place to **answer** the telephone if an **employee** does **attempt to call** in.

The issue that seriously concerns the Hoard is the failure of the **Claimant** to protect the **"Y"** order, or arrange for its cancellation. Such action on his part could have resulted in serious consequences.

Based upon **our** review of ~~the~~ entire record before the Board, we are convinced ~~that~~ severe discipline was warranted. However, **permanent** dismissal was excessive. **The** time that Claimant has been out of service **should constitute** sufficient discipline. ~~We~~ will award that Claimant be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

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 **Employee 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**

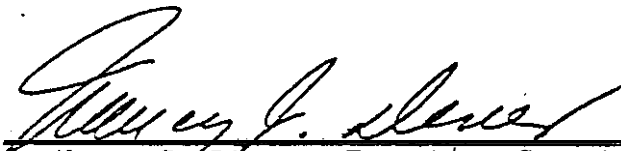
That the discipline was excessive.

A W A R D

Claim sustained in **accordance** with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1983.