

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24633  
Docket Number MW-24751

Paul C. Carter, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way **Employes**  
(Missouri-Kansas-Texas Railroad Company

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

(1) The dismissal of Machine Operator I. W. Brooks for "**failure** to follow instructions" on May 15, 1981 was without just and sufficient cause and wholly disproportionate to the charge leveled against him (System File 400-125).

(2) Machine Operator I. W. Brooks 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 the occurrence giving rise to the dispute herein, the Claimant was employed by the Carrier as a machine operator, with a seniority date of May 20, 1978, working under the jurisdiction of Extra Gang Foreman S. Abernathy and Roadmaster D. J. Bell.

The controversy arose as a result of Claimant's failure to receive his paycheck when he expected it, his attempt to locate the check; and his alleged failure to follow instructions of the Roadmaster on the afternoon of May 15, 1981, when he absented himself from duty from approximately 2:00 P.M. to 3:00 P.M., and 3:30 P.M. to 5:00 P.M., at Mile Post 1031, **San** Antonio, Texas.

On May 22, 1981, Claimant was charged:

"Please arrange to report to the M.K.T. Division Engineer's Office, 3700 **Katy** Lane, Waco, Texas, at 10:00 A.M., Tuesday, June 2, 1981, for a formal hearing to develop the facts and determine your responsibility, if any, **in connection** with your failure to follow instructions the afternoon of May 15, 1981 when you were absent from duty from approximately 2:00 P.M. to 3:00 P.M. and 3:30 P.M. to 5:00 P.M., at MP 1031 pole 3 to 5, San Antonio, Texas.

In this formal hearing, you will be charged with violation of Rules J and M, parts quoted, of the M-K-T **Lines** 'Rules for the Maintenance of Way and Structures,' effective January 1, 1981, which read as follows:

Rule J. (Part reading) 'Employees must not be . . . 3. Insubordinate . . . 6. Quarrelsome . . .'

"Rule M. (Part reading) 'Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with or substitute others in their place without proper authority ...'

Please be present at the above mentioned time and place. You may have representation and any such witnesses you may desire to appear in your **behalf**."

The hearing was postponed and conducted on June 23, 1981. A **transcript** of the hearing has been made a part of the record. A review shows that the hearing was conducted in a fair and impartial manner and that none of Claimant's substantive procedural rights was violated. Claimant was notified of his dismissal on June 30, 1981.

In the hearing substantial **evidence** was introduced to support the charge against Claimant. Severe discipline was warranted; however, permanent dismissal was excessive. We can readily understand Claimant's anxiety about his paycheck. The time that Claimant has been out of the service should constitute sufficient discipline. We will award that he be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the 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 30th day of January, 1984

