

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24735
Docket Number MW-24535

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Section Foreman J. D. Bork for alleged failure to 'comply with instructions from your supervisor, have failed to keep the track in a safe condition' and allegedly 'neglecting to repair track defects properly and immediately' was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement (System File C#59/D-2465).

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

OPINION OF BOARD: J. D. **Bork**, the Claimant, was a section foreman who, at the time of his dismissal, had **almost** twenty-four years of service with the Carrier. His dismissal was dated October 3, 1980, and was based upon his charged failure to comply with instructions to keep his assigned track section in repair and to repair track defects discovered by inspection. It is not disputed Claimant received the work assignments in question. The Organization protests Claimant's dismissal on a procedural basis as well as on the merits. We have examined the transcript of the investigation and are satisfied Claimant was adequately apprised of the nature and circumstances of the charge in order to prepare an adequate defense.

As for the merits, the record discloses the Claimant did not complete necessary work assignments. If he believed he would have a problem in compliance, he should have brought this to the attention of his superior requesting additional manpower and/or authority to work overtime. Review of the record reveals sufficient evidence was adduced to support Carrier's finding of Claimant's responsibility to timely make repairs to his assigned section. In arriving at the penalty of dismissal, Carrier asserts the Claimant had been previously disciplined for **similar** rule violations. The Board notes Claimant's most recent discipline occurred in 1974. Considering his almost twenty-four years of service and that he has been discipline free since 1974, we find the Claimant's dismissal to be disproportionate to his failings as a section foreman. Claimant is hereby granted one final opportunity to demonstrate his willingness to comply with all Carrier instructions. Claimant is to be reinstated as a section laborer with such seniority rights unimpaired, but without 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

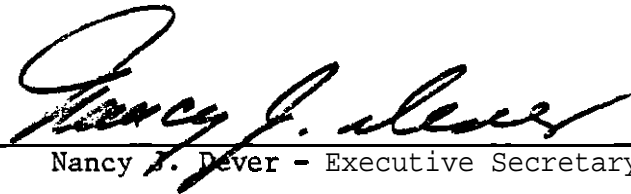
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.

