

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24995
Docket Number MW-25148

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation - Northeast Corridor

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

(1) The dismissal of Trackman J. Dunwoodie for 'fighting with another employee' on September 18, 1981 was without sufficient cause and unwarranted (System Docket 281D).

(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: Claimant had been in Carrier's service about six years. Following a trial on charge of fighting with another employee, in violation of Carrier's General Rule of Conduct "J", he was dismissed from service in all capacities by Notice of Discipline dated October 14, 1981. He had been held out of service beginning September 18, 1981, the date of the alleged occurrence.

A transcript of the trial, which began on September 24, 1981, and was concluded October 1, 1981, has been made a part of the record. We have carefully reviewed the transcript and find that none of Claimant's substantive procedural rights were violated.

There was substantial evidence adduced at the trial in support of the charge against the Claimant. Discipline was warranted; however, under the circumstances permanent dismissal was excessive. 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 the service.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.