

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25033
Docket Number MW-25189

Eckehard Muessig, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(**Missouri** Pacific Railroad Company

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

(1) The dismissal of **Trackman** J. Kleinpeter for allegedly being "quarrelsome" and alleged noncompliance "with instructions on **May** 26, 1982" was without just and sufficient cause (Carrier's File **S** 247-6413).

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

OPINION OF BOARD: This dispute came about after the Claimant had been found guilty, by the Carrier, of charges that he had been quarrelsome and insubordinate to a Carrier official. To arrive at its finding, Carrier relied principally upon the testimony of three of its officials during the investigation. Following a conference on the property, the Claimant was offered a leniency reinstatement on the basis that the discipline assessed had served its purpose. This action, on the part of the Carrier, was subject to the Claimant withdrawing the time portion of his appeal. The Claimant was not agreeable to so doing and, therefore, the dismissal assessed was not altered by the Carrier.

In the advancement of this dispute, the Organization has raised a number of well-stated procedural and due process contentions. While these are understandable, in its review of the record before it, the Board finds no substantial evidence in support of these contentions that would lead to a sustaining finding.

With respect to the merits of this case, there is ample evidence that the Claimant was quarrelsome and failed to comply with instructions. Having so concluded, there is no basis to disturb the penalty assessed, unless it is found to be arbitrary or capricious. No such finding is made in this case, and the claim is denied.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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