

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25236
Docket Number MW-25264

Eckehard Muessig, Referee

(Brotherhood of Maintenance of Way *Employees*

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company
Eastern Lines

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

(1) The dismissal of Track Laborer C. Joseph for alleged violation of *Rule 801*, "Rule 802" and "Rule 810" was without just and sufficient cause and unwarranted (System File MW-82-138/353-18-A).

(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: This dispute came about after the Carrier, subsequent to an investigation, found that the Claimant refused to **work** overtime after he had been properly instructed to do so and left his job without proper authority.

The Organization essentially contends that the record shows that the Claimant was not instructed to work overtime, but rather was given an option to work. Therefore, on the basis of this distinction and since it was Claimant's choice, the rules cited by the Carrier were not violated by the Claimant.

On the basis of the record, it cannot be said that the Carrier lacked **reason** for deciding that Claimant's actions were violative of the rules. Accordingly, the general issue is whether, under the circumstances, the Carrier had just and proper cause for dismissing the Claimant, or whether some lesser penalty would be sufficient for the offense committed. The Board has consistently found that **employees** are required to follow proper instruction and failure to do so may lead to dismissal. However, while not unmindful of the Claimant's past record, we find, based on the particular circumstances involved herein, that the discipline of dismissal is excessive.

Accordingly, the Claimant is to be restored with seniority rights unimpaired, but without back pay. He is to understand that this action provides him one last opportunity to comport himself in an acceptable manner.

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 Employes involved in this dispute are respectively Carrier and **Employes** 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. Diver
Nancy J. Diver - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.