

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25708  
Docket Number MW-25835

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(National Railroad Passenger Corporation

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

(1) The dismissal of Trackman C. Harris for alleged violation of 'Rules of Conduct I and K' was without just and sufficient cause (System File NEC-BMWE-SD-524D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant, Mr. C. E. Harris, entered the service of the Carrier as a Towerman on July 11, 1977. Mr. Harris was notified by letter dated September 28, 1982 to appear for a trial in connection with the following charge:

"Violation of the applicable portions of Amtrak's General Rules of Conduct I and K which read in part: Rule 'I' 'Employees shall not be retained in the service who are insubordinate..'. Rule 'K' Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor.' In that on 9/16/82 at approximately 9:00 A.M. in the vicinity of MP 55.3 you were instructed by your Foreman T. Reddick to align temporary rails and you failed to follow these instructions."

After two postponements, the trial was held on November 3, 1982. Following the trial, a Notice of Discipline dated November 12, 1982 was sent to Mr. Harris informing him that as a result of the evidence adduced at the trial he had been found guilty and was assessed discipline of dismissal in all capacities.

We find that the testimony of record of Track Foreman Reddick and Track Foreman Getta constituted substantial evidence of record that Mr. Harris failed to comply with instructions from Track Foreman Reddick to align temporary rails on September 16, 1982 and that such was a violation of Rules "I" and "K" of the Carrier's Rules of Conduct. It was entirely proper for the Carrier

to consider the past discipline imposed on Mr. Harris, as such related to the conditional reinstatement Letter of Agreement dated August 2, 1982, in making a determination on the measure of discipline to impose for the proven offense. We find that the discipline of dismissal in this case was neither arbitrary, capricious nor excessive.

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

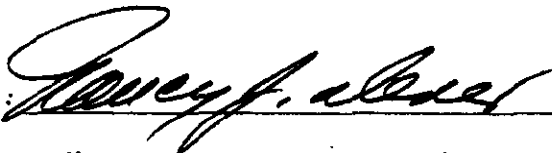
That the Agreement was not violated.

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 14th day of November 1985.

