

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25858
Docket Number MW-25896

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri-Kansas-Texas Railroad Company

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

(1) The dismissal of Section Foreman C. E. Woods for alleged misconduct on May 23, 24, 25, 26 and 27, 1983, was excessive and disproportionate to the charges leveled against him (System File 400-85/2579).

(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: The Claimant herein had about twenty years of service with the Carrier, and at the time of the occurrence giving rise to the dispute herein, was in charge of a section crew at Brookshire, Texas, the crew consisting of Claimant and one laborer. On June 13, 1983, Claimant was notified by the Division Engineer.

"Upon receipt of this letter you are suspended from the service of the M-K-T Railroad pending hearing. Please arrange to report to the Division Engineer's Office, Bellmead, Texas, at 11:00 A.M., Thursday, June 16, 1983, for a formal hearing to be held to develop the facts and determine your responsibility, if any, in connection with your alleged failure to wear your safety helmet on May 23, 24 and 25, 1983, as instructed, and your alleged failure to devote yourself exclusively to your duties during assigned working hours May 23, 24, 25, 26 and 27, 1983, when you apparently left company property numerous times for unknown reasons and during this same period of time accomplished very little or no constructive work for the M-K-T as most of your assigned working hours were spent in the Brookshire Depot, sitting on your motor car, or carrying on conversations with passers-by. You are also charged with alleged falsification of payroll records in which you claimed eight (8) hours worked each day for the period of May 23rd through May 27th, 1983, when in fact, you apparently left company property during the day for unknown reasons and left company property before 5:00 P.M. each of these days.

In this formal hearing you will be charged with violations of Rules J (part reading) and M (part reading of M-K-T Lines, 'Rules for the Maintenance of Way and Structures' effective January 1, 1981, which read as follows:

Rule J (part reading)... 'Employees must not be: (3) Insubordinate (4) Dishonest...'

Rule M (part reading)... 'Employees must report at the appointed time, devote themselves exclusively to their duties, must not be absent themselves (sic) without proper authority.'

"Please be present at the above mentioned time and place. You may have representation and any such witnesses you may desire to appear in your behalf."

Formal hearing was conducted as scheduled on June 16, 1983, and a copy of the transcript of the hearing has been made a part of the record. On June 24, 1983, Claimant was dismissed from service.

It was developed in the hearing, or investigation, that during the week of May 23 through May 27, 1983, Claimant and the laborer were observed by the Maintenance Engineer of the Carrier, who made practically a minute-by-minute report of his observation of Claimant and the laborer. The report of the Maintenance Engineer was presented at the hearing, or investigation, and he was present as a witness.

From our review, we find that none of Claimant's substantive procedural rights was violated in the manner in which the hearing, or investigation, was conducted. There was substantial evidence that the members of Claimant's two-man crew were not performing work in the manner in which it should have been performed, and that there was considerable "goofing off" by the foreman and the laborer. Severe discipline was warranted, but considering Claimant's years of service, we find and hold that permanent dismissal was excessive. The time that Claimant has been out of service should constitute sufficient discipline. 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, 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 imposed was excessive.

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Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.