

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26115
Docket Number MW-26120

Philip Harris, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company (Southern Region)

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

1. The dismissal of Foreman J. E. Mathias for failure to properly perform his duties as acting foreman on Production Unit ST 181 on August 5, 1983, was excessive and unwarranted (System File C-D-1925/MG-4276).

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: On August 5, 1983, Claimant reported late for work, did not seek work authority, left the property before his shift ended and gave no instructions to his crew when departing. As a result, the whole day was non-productive for the entire crew, along with the idle piece of expensive equipment assigned to them.

The Organization concurs with the facts, explaining that Claimant's behavior was due to illness. He woke up sick and came to work hoping he would soon feel better. However, on the job he "... didn't want to get on the track under an authority and get worse off and have to give up the track with only half a switch raised, possibly putting that track under a slow order."

The Board does not feel that the Carrier judged the Claimant improperly in finding him guilty of misconduct. However, considering the record as a whole including Claimant's personnel file, we agree that he should be reinstated with seniority and all other rights, but without backpay. This judgment is predicated on the specific understanding that the Claimant enter and successfully complete the Carrier's alcoholic rehabilitation program.

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

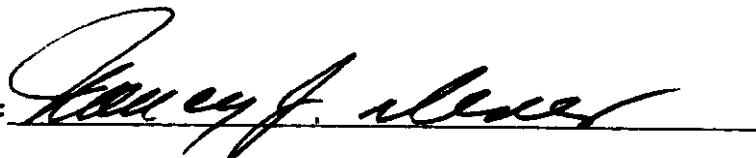
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

