

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26530  
Docket Number MU-26765

**Edwin H. Benn**, Referee

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

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

1. The dismissal of Extra Gang Foreman R. A. Marcum for alleged violation of Rule 110 (1) (2) (3) and (4) was without just and sufficient cause (System File 600-29).

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

OPINION OF BOARD: Claimant, an Extra Gang Foreman holding a seniority date of July 10, 1972, was dismissed from service after Hearing by letter dated August 29, 1984, for certain inadequacies in the performance of his Foreman's duties rising out of track repairs performed on or about August 2, 1984.

We find substantial evidence in the record to support the Carrier's determination that discipline was appropriate. The record clearly demonstrates that the repairs in the area in question were under Claimant's supervision and that the repairs were not correctly made and Claimant failed to properly perform his inspection functions. Specifically, ties were left unspiked and not supporting the rail; Claimant failed to issue instructions for a slow order of 5 m.p.h. and further failed to inspect certain work thereby failing to execute his responsibilities in accord with the appropriate Rules.

However, we are of the Opinion that dismissal was too harsh a disciplinary action in this case. We shall therefore **award** that Claimant be returned to service as a **Trackman** with seniority unimpaired **but** without compensation for time lost. Nothing herein shall prevent Claimant in the future from bidding on a Foreman's position.

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:



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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.