

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28588
Docket No. MW-28868
90-3-89-3-263

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Oklahoma, Kansas
and Texas Railroad Company)

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

(1) The Dismissal of Track Inspector J. A. Irwin for alleged violation of Rules 'B' and 'G' on February 23, 1988 was without just and sufficient cause, arbitrary, on the basis of unproven charges and excessive (System File MW-88-4-OKT/880437)

(2) As a consequence of the violation referred to above, the Claimant shall be reinstated with seniority, vacation and all other rights unimpaired, the charges leveled against him removed from his record and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Subsequent to an Investigation, the Carrier found the Claimant guilty of violating Rules B, G and 607. The incident giving rise to this case occurred on February 23, 1988, when the Claimant was arrested at his home and charged with five (5) criminal Counts involving drugs and drug paraphernalia. The record shows that Counts 1, 2 and 3 were dismissed and that the Claimant pleaded guilty to Counts 4 and 5.

The Board, after careful review of the evidence properly before us, finds that, given the particular circumstances of this case, the discipline of dismissal of the Claimant was unduly harsh. When so concluding, we mainly have given weight to the following items of interest: The testimony, at the Hearing held on this matter, shows that the Claimant was a very good employee with some thirteen (13) years of discipline-free service; the fact that there is no evidence that drugs or alcohol had ever been a problem with the Claimant in or out of the workplace; and the fact that he tested negative on a drug screen taken after he was arrested.

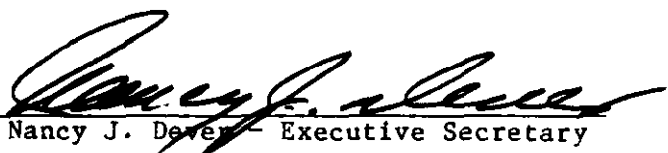
In view of all of the foregoing, we find that time out of service is sufficient discipline. Accordingly, the Claimant is to be restored to the service with seniority and other rights unimpaired, but without backpay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1990.