

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(Elgin, Joliet and Eastern Railway Company

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

(1) The dismissal of Track Foreman L. Reese for alleged absenteeism on May 19, 30, June 2, 14 and 15, 1989 and for alleged falsification of his Field Labor Information Report on May 30, June 2 and 15, 1989 was improper, on the basis of unproven charges and in violation of the Agreement (System File SAC-15-89/UM-38-89).

(2) The Claimant shall be reinstated with his seniority and all other rights unimpaired, he shall have his record cleared of the charges leveled against him, and he shall be compensated for all pecuniary loss suffered from the time of his suspension until he is restored to the position he held prior to the subject incident."

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.

Prior to his dismissal from Carrier's service, Claimant was assigned as a Track Foreman on a tie distribution gang. By letter of June 26, 1989, the Claimant was instructed to appear for a Hearing concerning charges of excessive absenteeism and falsification of the Foreman's Field Labor Information Report for his tour of duty on May 30, June 2, and June 15, 1989. A Hearing was scheduled on July 6, 1989, following which Claimant was dismissed from Carrier's service.

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92-3-90-3-538

On or about the same date, a Hearing was held in connection with other charges leveled against Claimant. Following the Hearing in that matter, Claimant was discharged. In a subsequent decision, Third Division Award 29127, the Board upheld Carrier's dismissal of Claimant. Thus, in the absence of compelling evidence to the contrary, the Board finds the present claim to be moot.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.