

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32928
Docket No. MW-33830
98-3-97-3-322**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal and subsequent reinstatement to service without pay) imposed upon Mr. R. E. Gartner for alleged ' . . . failure to comply with instructions as issued by Roadmaster H. T. Goodwin when you worked overtime without authorization on Wednesday, May 8, 1996. . . . ' was arbitrary, capricious, excessive and in violation of the Agreement (System File 1996-8).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant Gartner, a veteran Track Foreman, was working as a Track Inspector under the supervision of Roadmaster H. T. Goodwin at the time this grievance arose. At a meeting on Monday, April 29, 1996, Goodwin informed his crew that they would be working ten hours a day for a period of time, and requested that everyone make arrangements to work late. During the course of a second meeting later that day, Goodwin repeated those instructions. On May 8, following a brief telephone conversation with Goodwin, Claimant worked two hours beyond his normal 3:30 P.M. quitting time to complete certain repairs, under the misapprehension that he had been implicitly authorized to do. Later that day, Goodwin informed Claimant that he did not have permission to work overtime and that an Investigation would be held to determine whether Claimant had failed to comply with his instructions.

On May 17, prior to the Investigation then scheduled for May 24, 1996, the General Chairman and Roadmaster Goodwin reached an understanding by which Claimant would receive a 45 day suspension, to be held in abeyance for six months. On May 23, Goodwin advised the General Chairman that the settlement concluded earlier would not be implemented. The Investigation went forward the following day, as a result of which Claimant was dismissed for failure to follow instructions. On August 8, he was reinstated on a leniency basis effective August 14, with time out of service and disqualification as a Foreman to serve as discipline. On December 9, Carrier unilaterally reinstated Claimant's Foreman rights and seniority.

The issue presented to the Board for consideration is whether the Claimant's disciplinary suspension from May 31 to August 14, 1996 was warranted. Based upon examination of the record herein, including review of the Hearing transcript in which it is clear that Claimant freely admitted full responsibility for the incident, we conclude that the degree of discipline imposed was not reasonably related to the offense. On the unique facts of this case, the Carrier's interest in administering corrective discipline would have been served by simply assessing a 45 day overhead suspension for a period of six months as initially agreed upon by the parties.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.