

Award No. 8759

Docket No. MW-10551

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
UNION PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the agreement when it dismissed Section Foreman W. C. Lowe from service on April 16, 1957.

(2) Section Foreman W. C. Lowe be reinstated to his former position with seniority, vacation and other rights unimpaired and that he be paid for all time lost.

OPINION OF BOARD: Claimant herein was dismissed from the Carrier's service on April 16, 1957, which dismissal was affirmed by Carrier on May 25, 1957, following investigation held at Claimant's request on May 21, 1957. Claim is here made for reinstatement with pay for all time lost since April 16, 1957.

The record herein discloses that the Carrier, in a conference held on or about February 7, 1958, offered to reinstate the Claimant without pay for time lost, and conditioned on Claimant's passing the requisite physical examination. The offer was made and understood by the parties to this dispute on the premise that the discipline had "fulfilled its purpose."

After full consideration of the entire record herein, and without construing the rules of the Agreement relied upon by the parties as they might apply to any other case involving the same or similar set of circumstances, the Division finds that the evidence of record supports the decision of the Carrier; that the above offer should have been accepted and, therefore, holds that the Claimant should be returned to the Carrier's service, with seniority unimpaired in accordance with Carrier's offer. This disposition is premised upon the fact that the offer was made by the Carrier. This Award is not to be construed or cited as a precedent.

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

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not violate the Agreement.

AWARD

Claim (1) denied.

Claim (2) disposed of in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1959.