

Award No. 13681

Docket No. MW-13814

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

William H. Coburn, Referee

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it suspended and thereafter dismissed Sectionman Lete McDaniel from service without just and sufficient cause and on the basis of unproven charges.

(2) The Claimant be reinstated to service with seniority, vacation and all other rights unimpaired; his record be cleared of the charges; reimbursement be made for all wage loss suffered; all in accordance with Rule 19 of the Agreement.

**OPINION OF BOARD:** Claimant was dismissed from service as of January 9, 1962, "... for insubordination when you failed to act upon the instructions issued by Section Foreman about 2:00 A.M. Jan. 8, 1962 (sic) Armourdale Yard Kansas City Kans." (Supt's Ltr. Jan. 19, 1962, to Claimant).

The material facts are that on January 8, 1962, at about 2:00 A.M. Claimant was a member of a section gang engaged in removing snow and ice from switches in the Hump Yard. He and two other members of the gang were in a switch shanty getting warm when the Foreman entered and ordered them to resume work.

The testimony is in sharp conflict as to (a) how long the men had been in the shanty; (b) whether or not they complied with the order immediately or after it had been repeated three times; (c) who started the altercation between Claimant and the Foreman and what actually was said during the ensuing wrangle; (d) whether the Claimant punched the Foreman in the chest with his finger.

It is not disputed that Claimant continued working despite the order of the Foreman to leave the property as his time had been cut off as of 2:00 A.M., and that a Special Agent had to be called and used to get Claimant to go home.

On the basis of all the evidence of record, the Board has no difficulty in finding that Claimant's conduct, taken as a whole, was disrespectful and insubordinate to a degree warranting some disciplinary action. The sole ques-

tion is whether under the circumstances, the severe punishment of dismissal from service was justified. We think it was not. The facts show that the employees involved had been on duty continuously (except for brief meal periods) since 7:30 A. M. on January 7 and had been working under trying conditions created by cold and snow. The Carrier might well have taken into consideration the fact that under these conditions men are prone to lose their tempers and engage in conduct not to be condoned under normal circumstances. Had it done so, the Carrier, in our opinion, would not have dismissed Claimant from service.

The Board may properly exercise its discretionary power in mitigating discipline imposed where, as here, it is clear that the punishment, measured in the light of all the facts and circumstances and the gravity of the offense committed, is harsh, excessive, or unreasonable. (See Award 11170). Accordingly, we find that Claimant should be restored to service with his seniority and all other contractual rights unimpaired but without reimbursement for wages lost.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

Claim will be disposed of in accordance with Opinion and Findings.

#### AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1965.