

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19569
Docket Number MW-19821

Frederick R. Blackwell, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Louisville and Nashville Railroad Company

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

(1) Track Repairman Michael L. Young was unjustly dismissed from service (by letter dated October 11, 1971) for allegedly "walking off the job Friday, October 8, 1971" (System File 1-12/D-103798 E-306-18).

(2) Track Repairman Michael L. Young be reinstated with all rights unimpaired and that he be compensated for all wage loss suffered all in accordance with Rule 27(f).

OPINION OF BOARD: This is a discipline case arising under Agreement between the parties effective May 1, 1960. The claimant was dismissed for allegedly "walking off the job on Friday, October 8, 1971."

There is considerable discussion in the record as to whether claimant was dismissed by his foreman or by the Division Engineer, but we do not consider the issue important. The fact remains that claimant was terminated. In passing, however, it would appear that if the Division Engineer actually dismissed claimant, then he (the Division Engineer) would have notified the claimant to that effect.

We have reviewed the entire record, including the transcript of the investigation conducted on October 25, 1971. It appears that claimant may have had a legitimate excuse for going home shortly after noon on October 8, 1971, that is, the illness of his daughter and the matter of taking her to see a doctor. However, he should have reported to the foreman before actually leaving the gang.

While the claimant had short service with the Carrier, and that service may not have been entirely satisfactory, at the same time permanent dismissal under the circumstances as developed in the record, was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of service.

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

That the parties waived oral hearing;

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.