

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20305  
Docket Number MW-20430

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Burlington Northern Inc.

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

(1) The dismissal of Sectionmen G. Eliason and G. Pilarski was without just and sufficient cause and on the basis of unproven and disproven charges.  
[System File T-M-10C/MW-20(a) 1-9-73]

(2) The suspension of G. Eliason and G. Pilarski pending investigation was in violation of Rule 40-B because a serious infractions of rules was not involved and because neither of the claimants was notified at time removed from service of the reason therefor.

(3) The discipline of the claimants shall be set aside and removed from the record; the claimants shall be reinstated with their seniority rights unimpaired and be compensated for wage losses suffered by them resulting from such discipline and suspension (Rule 40-G).

OPINION OF BOARD: This is a discipline case in which the two claimants were withheld from service pending investigation under Rule 40-B; after hearing, they were dismissed from service for being absent from duty without authority.

The record shows that the claimants asked their regular foreman for permission to leave work at 10 a.m. on Friday, September 1, 1972. Their understanding that permission had been granted is confirmed by this foreman's testimony. However, on Friday morning a different foreman was on duty. He told the claimants they could not leave without seeing the Construction Roadmaster, but they left work without doing so. All of this happened in a context in which the Carrier was making a special effort to reduce absenteeism.

The record contains substantial evidence to support a measure of discipline. However, the conflicting instructions from the foremen produced confusion and it is not surprising that the claimants resolved the confusion by relying on the statement of their regular foreman. The confusion constitutes an important mitigating fact and renders the discipline of permanent dismissal excessive. We shall

therefore award that the claimants be restored to service without pay for time lost. Also, since the incident did not involve a serious infraction as contemplated by Rule 40-B., the claimants shall receive compensation for the period September 5 to 13, 1972 of the pre-hearing suspension.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The discipline shall be reduced.

A W A R D

The claim is sustained in part and denied in part. The claimants shall be restored to service without pay for time lost, except that they shall be compensated for the period September 5 to 13, 1972 of the pre-hearing suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1974.