

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20350
Docket Number MW-20507

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Track Foreman T. G. Cummings for allegedly violating "Rules 176, 189, 209 and General Rule E" was improper, without just and sufficient cause and based upon unproven charges (System File A-9408).

(2) Track Foreman T. G. Cummings be reinstated with seniority, vacation and all other rights unimpaired; the charges against him be stricken from his record; he be compensated for all wage loss suffered, all in accordance with Rule 1 (d) of Article 4.

OPINION OF BOARD: The Claimant had been in Carrier's service about six years, with seniority as foreman dating from May 12, 1967. On August 25, 1972, he was removed from service for alleged violation of Carrier's rules 176, 189, 209 and General Rule E of the rules for the Maintenance of Way and Structures. The claim is that he be restored to service with seniority, vacation and other rights unimpaired; the charges against him be stricken from the record and that he be compensated for all wage loss suffered, in accordance with Rule 1 (d) of Article 4.

The Board has carefully reviewed the entire record in the dispute, including the transcript of the investigation conducted on September 28, 1972.

We find that none of Claimant's substantive procedural rights were violated. We further find that disciplinary action was warranted. Claimant clearly did not meet his responsibility as foreman. However, permanent dismissal is excessive. We will award that Claimant be restored to the service, with seniority and other rights unimpaired, but without any compensation for wage loss.

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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 was excessive.

A W A R D

Claim sustained to extent set out in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.