

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20937  
Docket Number MW-21105

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The dismissal of Trackman Salvador Quijas on April 12, 1973 was arbitrary, unjust, an excessive penalty, an abuse of discretion and on the basis of charges not sustained by the record (System File 11-680-20-2).

(2) The decision dated May 1, 1973 by Superintendent J. W. Tiehen does not conform with the requirements of Article VI, Section 1 of the Agreement.

(3) As a consequence of (1) and (2) above, the Carrier shall now reinstate Salvador Quijas to his former position of trackman, with seniority, vacation and all other rights unimpaired and compensate him for all wage loss suffered.

OPINION OF BOARD: Basic fairness and justice requires Carrier to advise an employee who waives investigation and accepts discipline, when the waiver and acceptance will give him a total number of demerits over the maximum permitted by the Brown system, that by so doing he is thereby assenting to dismissal. The notice must be clear and unequivocal.

Claimant was not given notice and he accepted demerits which placed his total over sixty. His dismissal followed automatically and was unjust, given all of the circumstances. However, his claim for back wages is denied since the record shows that he had committed a rules violation which, when viewed in the light of his record, supports suspension for the period he has been held off the job.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Claimant should be suspended but not dismissed.

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Claim sustained in part. Carrier is directed to restore Claimant to service with full seniority and rights, but without pay for time lost. His demerit total is not to exceed 58 at the time he is reinstated.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulose  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1976.