

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21264
Docket Number MW-21541

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Railway Company

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

(1) The Agreement was violated when the Carrier dismissed Laborer Johnny Reese without benefit of a fair and impartial investigation as stipulated within Agreement Rule 40(a) [System File MW-337].

(2) The claimant shall be restored to service with seniority and other rights unimpaired and paid for all time lost subsequent to February 11, 1974.

OPINION OF BOARD: The Board has carefully reviewed the record in this dispute. It shows that claimant was employed in Carrier's Track Department from November 12, 1973, until February 11, 1974. The claim is that he was dismissed without investigation in accordance with the Agreement.

The Carrier has maintained from the time that the claim was initiated that claimant was not dismissed from the service, but that rather than follow instructions of his superiors as to work to be performed on February 11, 1974, claimant removed his personal belongings from the gang, told other employees that he had quit and left the job of his own volition. There is no probative evidence in the record to refute the contention of the Carrier in this regard.

Based on the record, the Board can reach no conclusion other than that claimant voluntarily quit, and having quit he had no further rights under the agreement, and no right to an investigation. The claim must be denied.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1976.