

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21831
Docket Number MW-21896

Herbert L. Marx, Jr., Referee

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

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

(1) The dismissal of Track Repairman K. S. Morse by letter dated July 3, 1975 but handed to the claimant upon his reporting for work on Monday July 7, 1975 was without just and sufficient cause and on the basis of unproven charges (System File 1-12 (139)/D-106136; E-306-18).

(2) The Claimant shall be reinstated to service with seniority rights unimpaired and he shall be allowed pay for the same amount of straight-time and overtime hours worked by the gang to which he was assigned, beginning with July 7, 1975 and continuing until date of his restoration to service.

OPINION OF BOARD: From our review of the record it is clear that claimant was in violation of Carrier's Rule "G", which reads:

"G. The use of intoxicants or narcotics by employes subject to duty, or their possession or use while on duty, is prohibited, and will subject the offender to dismissal."

Under the circumstances, however, permanent dismissal was excessive. Accordingly, 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.

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 Employes involved in this dispute are respectively Carrier and Employes 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:

AW. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.

