

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22033
Docket Number MW-22136

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

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

The dismissal of Track Foreman W. J. Clemons was without just and sufficient cause and without benefit of a physical examination provided by the Carrier and he shall, therefore, be reinstated to service and accorded all the benefits and privileges of Agreement Rule 24(d). (System File 013-293-25/TRRA 1976-39)

OPINION OF BOARD: This dispute involves Claimant's prolonged absence from work for claimed mental illness, without contact with Carrier. Upon his return to work there were a series of anomalies, beginning with a letter from Carrier's Assistant Chief Engineer to Claimant's wife and ending with an investigation culminating in Claimant's dismissal.

We do not deem it necessary to comment on the charges and counter charges relating to Carrier's practice of requiring medical certification relating to an employee's absence due to illness. It is quite clear that Claimant suffered for some time with a mental disorder which in this instance accounted for his behavior. In view of the extenuating circumstances surrounding this dispute, we do not believe that Carrier was justified in dismissing Claimant. We shall order his reinstatement, without compensation for lost time, conditioned upon his passing a Carrier medical examination. It is noted, however, that Claimant's record indicates previous disciplinary lapses on his part, including at least one serious problem. He must be made aware that his reinstatement in this instance (conditioned on the medical findings) should be deemed his last opportunity; any further major infraction must result in his final separation from 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, 1923;

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

That the discipline imposed was inappropriate.

A W A R D

Claim sustained in part in accordance with the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.

