

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22096
Docket Number MW-22189

Louis Yagoda, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{
{ Missouri Pacific Railroad Company
{ (Former Texas & Pacific Railway Company)

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

(1) The Carrier erred and a great injustice was inflicted on Trackman A. J. Ward when, following a formal investigation held on April 6, 1976, it dismissed Trackman A. J. Ward because of an alleged violation of General Rule 'N' of Rules and Regulations for the Maintenance of Way and Structures (System File K-310-154).

(2) The benefits of Agreement Rule 12, Section 1(e) shall now be extended to Claimant Ward.

OPINION OF BOARD: Claimant admittedly failed to report for work on March 9, 1976. In his testimony on this subject at the hearing which resulted in the imposition of the subject discharge penalty, Claimant stated that he had called the dispatcher at the Durant depot that day to tell him that he would be off.

Claimant admits however, that when questioned about his absence on the day after it occurred he told the Roadmaster in the presence of the General Roadmaster that he had failed to notify anyone of his absence on the 9th, but he also stated at the hearing that he had, in fact, called in, but that his contrary declaration to the Roadmaster was caused by Claimant's general repugnance to the "harsh" attitude of the Roadmaster towards the employees.

Claimant did not, however, substantiate the latter accusation - or make it clear how it did, or why it should, affect his having misrepresented to Roadmaster that he had called in.

Testimony at the investigation is, in fact, in contradiction of Claimant's testimony that he called a "dispatcher" at Durant, Oklahoma. Carrier has no dispatcher at this location and all other credible testimony is that no call was made to anyone in authority.

Claimant's testimony is further self-contradicted by his having also stated to Roadmaster at one point (when questioned on his absence) that he had not telephoned anyone inasmuch as he did not have a telephone and did not want to bother the neighbors by using theirs.

We conclude that Carrier had material evidentiary basis for finding Claimant guilty of violation of Rule "N" of Rules and Regulations for the Maintenance of Way and Structures, and, when consideration is taken of Claimant's earlier attendance record, was entitled to impose a substantial disciplinary penalty therefor. However, we believe that dismissal is too harsh a measure, under all the circumstances and will award that the penalty be amended to restore Claimant to employment within thirty (30) days, without restitution of loss of earnings.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary



Dated at Chicago, Illinois, this 31st day of May 1978.