

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22528
Docket Number MW-22714

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Trackman-Driver E. J. Barnett was without just and sufficient cause and exceedingly disproportionate to the offense with which charged (System File B-1103).

(2) Claimant Barnett shall be reinstated to service and extended all other benefits and remedies prescribed in Rule 91(b)(6)."

OPINION OF BOARD: Claimant had about seven years' service with the Carrier. On October 7, 1977, he was working as a trackman-driver, Track Gang No. 130. On that date the Roadmaster instructed the foreman in charge of the gang to work the entire gang on the following day, Saturday, October 8, 1977. The gang was working with the Sperry Rail Car, changing out rail behind the test car. The foreman informed all the members of the gang, including the claimant, instructing them to report at 7:00 A.M. the following day.

The claimant informed the foreman that he may not be able to work on Saturday, October 8. The foreman did not give him permission to be absent, but told him to call the Roadmaster, who had instructed the foreman to have all members of the gang work on the day involved.

The claimant did not call the Roadmaster, nor did he report for work on October 8. When he reported for work on October 10 the foreman removed him from the service. Upon request of representative of the Organization, a formal investigation was conducted on October 25, 1977. On November 2, 1977, claimant's dismissal from service was confirmed by the Division Engineer. On a number of occasions following claimant's dismissal, the Carrier offered to restore him

to the service on a leniency basis, without pay for time lost. Each such offer was declined.

We have carefully reviewed the entire record, including the transcript of the investigation conducted on October 25, 1977. Discipline was warranted; however, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without compensation 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 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

That the discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.