

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22796
Docket Number MW-22900

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Maintenance of Way Agreement, especially but not limited to Rule 6 - Discipline and Grievances, when B&B Painter J. P. Parker was unjustly dismissed (System File MW-78-4-CB/53-655).

(2) B&B Painter J. P. Parker be now reinstated to his former position with pay for all time lost and with vacation, seniority and all other rights unimpaired. Also that this charge be stricken from his record."

OPINION OF BOARD: Claimant was a painter in Carrier's B&B Gang No. 6 and had been in the service of the Carrier some nine or ten months. He was absent from duty on February 16 and 17, 1978, without proper authority. He was dismissed from service by the B&B Supervisor by letter dated February 22, 1978.

Following his dismissal, claimant immediately requested a hearing in accordance with the provisions of the applicable Agreement. The hearing was conducted on March 8, 1978, and on March 18, 1978, claimant was notified that his dismissal was sustained. A copy of the transcript of the hearing has been made a part of the record.

The Board has carefully examined the transcript of the hearing, and it seems significant that Carrier did not question claimant during the course of the hearing as to the reason for his absence on February 16 and 17, 1978. The claimant testified in the hearing that at the time the Supervisor gave him the letter of dismissal he gave no explanation as to the reason for such action.

In its submission to the Board the Carrier brings out the fact that the claimant had been arrested on February 15, 1978, and was in jail on February 16-17 on charge of possessing a controlled substance; was released on bond to his attorney on February 17, 1978; later pleaded guilty and was placed on a three-year probation. In reviewing the correspondence covering the handling of the dispute on the property, we do not find where the matter of claimant having been arrested and in jail on February 16-17, 1978, was mentioned by the Carrier, although the on-property handling extended over a period of several months.

Claimant's actions justified severe discipline. However, based on the record, the Board is of the considered opinion that the time that claimant has been out of service should constitute sufficient discipline for the offense. We will award that claimant be restored to the service with seniority and other rights unimpaired, but without compensation for time lost while out of the service. Claimant should clearly understand, however, that the purpose of this award is to give him one last chance to become and remain a responsible employee, and that further major infractions by him will result in the permanent termination of his services.

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 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:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.

