

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22876
Docket Number MW-22989

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(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, and Rule 4 - Leave of Absence, when on March 6, 1978, B&B Bridgeman T. J. Simmons was unjustly dismissed, due to being injured on duty (System File MW-78-7-CB/53-656).

(2) B&B Bridgeman T. J. Simmons be reinstated, with all rights unimpaired and be shown on sick leave until such time he is released by the doctor to perform his regular duties.

(3) Bridgeman T. J. Simmons shall be compensated for any and all time he may have lost due to his being dismissed on March 6, 1978, and this charge shall be stricken from his record."

OPINION OF BOARD: Claimant was employed as the No. 1 bridgeman on Carrier's B&B Gang 4102. He was absent without authority on March 6, 1978. As a consequence, he was dismissed from service as of that date. Claimant requested a hearing. It was held on March 28, 1978, and the record of that hearing has been submitted as an exhibit in this case. As a result of the hearing, claimant's discharge from service was upheld. The claim was thereafter processed on the property and has finally been placed before this Board for resolution.

The record before us reveals that claimant has been afforded all substantive procedural rights due him throughout the processing of this case on the property.

The record also reveals that claimant was injured on the job on July 25, 1977, and that he was suffering pain from these injuries. He had been under a doctor's care prior to March 6, 1978; at the time of the hearing in this matter, he was also under a doctor's care and was not released by that doctor for duty. There is some confusion in the record as to how claimant was notified about the fact that if he did not report for work on March 6, 1978, he would be taken out of service.

Based on the entire record, there is not substantial evidence to support his permanent separation from service. Claimant's lack of effort to get back to work on a permanent basis after his accident was viewed by

Carrier as malingering, and an attempt to establish a personal injury claim. The Board cannot support Carrier's view on this point, but it does agree with Carrier that claimant had been released for duty by company doctors and that he should have immediately reported for duty. In that regard, claimant was derelict in his responsibility. He should have appeared for work on March 6, 1978. If at that time his condition was so poor that he could not perform his normal duties, some special arrangement could have been made for him.

On occasion, this Board, based upon the entire record of a particular case, has reduced the penalty imposed by Carrier when it thought that it did not fit the "crime" committed. It is the Board's opinion in this case that the time claimant has been out of service should constitute sufficient discipline. We will award that he be reinstated to service, with seniority and other rights unimpaired, but without pay for time lost while out of service. Claimant should clearly understand, however, that he must appear for work on a regular basis with few if any absences if he expects to keep his job on a permanent basis.

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 was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.