

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22938
Docket Number MW-23022

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

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

(1) The dismissal of Laborer A. J. Batiste was without just and sufficient cause, arbitrary and capricious [System File MW-78-129/.

(2) Laborer A. J. Batiste shall be afforded the remedy prescribed in Article 14(f)."

OPINION OF BOARD: Claimant, A. J. Batiste, is a track laborer assigned to Extra Gang No. 103. He was dismissed on June 21, 1978, for insubordination, a violation of Rule 801.

On June 20, 1978, claimant was engaged in a road crossing renewal project at Mile Post 25.6 on the Alexandria Branch at Nuba, Louisiana. The gang at work on this project did not have an assigned supervisor. Members of the gang were standing around, idle, when the Division Engineer and his assistant arrived at the work location. These men observed the gang members for about 15 minutes.

The Assistant Division Engineer then approached the gang and asked claimant his name. Claimant refused to give an answer. The Division Engineer also approached claimant and asked his name. He asserts that claimant did not give him his name either. The Division Engineer ordered claimant off the property; he refused to leave. The day after this confrontation, claimant was dismissed from service for a violation of Rule 801--specifically, "Employees will not be retained in service who are insubordinate."

A hearing was held into the matter on August 21, 1978. Claimant's discharge was upheld by the hearing officer. The transcript of that hearing has been made a part of the record of this case. A review of that record reveals that claimant has been granted all substantive procedural rights required by contract.

Carrier contends that discharge was for proper cause. The Organization contends that it was arbitrary, capricious, and unjust. Claimant should be reinstated with all lost wages and benefits restored to him.

X-1
The Board is of the opinion that claimant is guilty as charged and that by refusing to give his name to the Assistant Division Engineer and the Division Engineer, he was, in fact, insubordinate. Consequently, he should have been disciplined. He should not, however, have been discharged from service. This Board is mindful of its obligation to not substitute its judgment for that of carrier in discipline grievances. It is also mindful of the fact that, on occasion, mitigating circumstances can and should have an impact on penalties imposed on employees for rule infractions.

Y-V
In the cold light of the record before us in this case, it cannot be concluded that Carrier's supervisors were not partially responsible for what took place. The Assistant Division Engineer did not identify himself as a Carrier official when he first approached claimant and asked his name. While claimant's failure to give him his name is somewhat unusual, it is understandable. Once claimant first refused to give his name, the confrontation between claimant and the supervisor seemed to have escalated to a point where the police were called in to remove claimant from railroad property. Claimant did not act properly in this instance, but neither did the Assistant Division Engineer.

This Board is aware of claimant's past record and thinks that this incident should be the last such incident this claimant is involved in. Based on the whole record, this Board will reinstate claimant to his former position with no loss of benefits or seniority, but with no back pay.

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 was excessive.

Award Number 22938
Docket Number MW-23022

Page 3

A W A R D

Claim sustained in accordance with Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: AW. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.