

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22959
Docket Number MW-23041

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Louisville and Nashville Railroad Company
(Former Chicago & Eastern Illinois Railroad Company)

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

(1) The dismissal of Machine Operators J. R. Miller and R. C. Walker was without just and sufficient cause, unwarranted and wholly disproportionate to the offense with which charged (Carrier's File D-107019 E-306-18).

(2) Machine Operators Miller and Walker shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to their dismissal from the service, claimants J. R. Miller and R. C. Walker, with about two years and three years of service respectively, were employed as machine operators on AFE Gang 253. They were under the supervision of Roadmaster P. L. Perucca and Foreman T. A. Neidig. Due to heavy snow and ice conditions, the Carrier was experiencing difficulty in serving industries.

Early in the morning of January 16, 1978, claimants were sent to Alice Yards, Vincennes, Indiana, to clean switches in that yard. About 11:00 A.M. on that date the Roadmaster was instructed to send the members of AFE Gang 253 to Evansville, Indiana, where the snow was accumulating fast and help was needed to keep the yard open. The Roadmaster attempted to contact the claimants in the vicinity of Vincennes, to instruct them to go to Evansville, where they both lived. He was unable to contact them.

It developed that claimants were using a truck that belonged to claimant Walker. The truck developed a faulty water pump which it was necessary to replace. By the time the repairs were made to the truck, it was about 4:00 P.M., and the claimants then decided to go home. In the meantime, while waiting for repairs to the truck, the claimants did not attempt to contact the Roadmaster, the Foreman or any other supervisory personnel.

The claimants were suspended from service pending an investigation on the ground that the Carrier was faced with an emergency and the claimants left their jobs without being released from duty during the emergency. On January 20, 1978, the claimants were notified by Roadmaster Perucca:

"Please refer to my letter to you dated January 16, 1978, advising you that you were relieved from service of L&N pending investigation for leaving your job without being relieved from duty during an emergency.

"This is to advise fromal investigation will be conducted in the L&N General Office Building at 9:00 AM, Wednesday, January 25, 1978.

"Arrange to be present, along with a representative if you desire one and any employee witness you may wish to present.

"Your personal file record will be reviewed at the investigation."

The investigation was conducted as scheduled. Claimants were present at the investigation and represented by the General Chairman of the Organization. A copy of the transcript of the investigation has been made a part of the record. On February 13, 1978, claimants were notified of their dismissal from service. Each letter of dismissal stated in part:

"Formal investigation conducted in Evansville, Indiana, on January 25, 1978, revealed that you did leave your job along with another employee on this date to have personal vehicle repaired and did not contact your foreman, roadmaster or any L&N office to inform them of your absence from duty and, therefore, are guilty as charged."

Based on our review of the entire record, the Board concludes that discipline was warranted. However, under the circumstances prevailing, permanent dismissal was excessive. We will award that claimants be restored to service with seniority and other rights unimpaired, but without any 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 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 August 1980.