

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23254
Docket Number CL-23366

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9278) that:

(1) The Missouri-Kansas-Texas Railroad Company violated the current Rules Agreement between the parties (DP-451), including but not limited to Rules 26, 27 and 33, when it arbitrarily and capriciously dismissed Mr. P. S. Hinds, Clerk, Bellmead Yard, Waco, Texas, from its service on April 5, 1979, without just and sufficient cause and then failed to prove its charges in the record of the investigation.

(2) Carrier shall be required to reinstate Clerk P. S. Hinds to its service with his seniority, vacation, insurance and all other employee rights restored unimpaired and pay him for all time lost commencing with April 5, 1979.

OPINION OF BOARD: Claimant had a seniority date of March 13, 1972 and was the regular occupant of EDP Clerk Position with assigned hours 11:00 PM to 7:00 AM, Tuesday through Saturday. He was verbally removed from the service by the Trainmaster about 12:01 AM, April 5, 1979. He was advised by letter dated April 5 from the Superintendent that he was dismissed from the service for violation of the Uniform Code of Safety Rules.

In the letter of April 5, 1979, from the Superintendent, it was alleged that claimant was transporting a conductor and brakeman in an automobile from Bellmead Yard Office to the south end of Ballmead yard; that the automobile was allegedly operated at a high rate of speed, struck a switch stand, as well as the side of Train No. 106; the automobile turned over, causing damage to equipment and also personal injuries to the conductor and brakeman.

The claimant requested a formal investigation under the Agreement, which investigation was scheduled for April 18, 1979, postponed and held on April 20, 1979. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated. There was substantial evidence adduced at the investigation to warrant disciplinary action

against the claimant. However, the Board considers permanent dismissal excessive. The time that claimant has been out of service should serve as sufficient discipline. We will award that claimant be restored to the 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 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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.

