

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23346
Docket Number MW-23351

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Laborer Lindsay K. Waldrop for alleged violation of 'Rule 700 and M-702' was without just and sufficient cause, on the basis of unproven and disproven charges and was wholly disproportionate to the charge leveled against him (System File G#134/D-2227).

(2) Laborer Lindsay K. Waldrop shall be reinstated with seniority and all other rights unimpaired and shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a section laborer in Carrier's Maintenance Gang No. 4227, with about four years of service. He was dismissed from the service by the foreman for failing to protect his assignment on August 16, 1978, and being absent without permission. He requested a hearing, in accordance with the Agreement, which hearing was held on September 8, 1978, and his dismissal was affirmed on September 18, 1978, however, in the same letter the Carrier offered to restore claimant to service on a leniency basis without pay for time lost, which offer was rejected. An appeal hearing on the discipline was held on October 12, 1978, and a decision on the appeal hearing was rendered on October 19, 1978, at which time the Carrier again offered to restore claimant to the service without pay for time lost. Another offer to restore claimant to service without pay for time lost was made on January 23, 1979.

Under the rules in effect on this property, we conclude that the claim is properly before the Board. Claim for pay for time lost was initiated within sixty days from the decision on the appeal hearing under the discipline rule.

The Board has carefully reviewed the entire record in the case, including the transcript of the investigation or hearing conducted on September 8, 1978. We find that none of claimant's substantive procedural rights was violated. He was present throughout the investigation and was represented. The discipline rule of the agreement gave claimant the right to call witnesses to testify in his behalf.

Based on the entire record, discipline was warranted; however, permanent dismissal was excessive. We will award that claimant 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 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. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.

