

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23362  
Docket Number MW-23333

Josef P. Sirefman, 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 Machine Operator Michael R. Campbell for alleged violation of Rule 700 was without just and sufficient cause /System File C#127/D-2232-1/.

(2) Machine Operator Michael R. Campbell shall be reinstated with all seniority rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant Michael R. Campbell was hired by the Carrier on May 30, 1978. On September 13, 1978, while working as a Machine Operator, he was dismissed by his Supervisor for insubordination in stopping work without permission and calling his Supervisor "a few names".

A hearing was held on September 27, 1978. An examination of the record before the Board establishes that Claimant failed to indicate to his Foreman that he had a medical problem and wanted to leave work because of it, and that he used inappropriate language towards his Supervisor. There was substantial evidence to sustain the Carrier's decision to discipline Claimant.

The penalty of dismissal is, however, too severe. This was recognized by the Carrier when, on September 29, two days after the hearing, it acted promptly in offering Claimant "reinstatement effective at once on a leniency basis without pay for time lost"; the loss of twelve days pay being considered sufficient for corrective impact on Claimant, an employee of a few months duration. This offer was consistently made by the Carrier in subsequent grievance steps and apparently rejected more than once by the Claimant. Accordingly it is our determination and we so order that Claimant be restored to service without pay for the time he has been 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. Paulsen*

Executive Secretary

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

