

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23505
Docket Number MW-23876

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Consolidated Rail Corporation

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

(1) The dismissal of Machine Operator Robert J. Brown for allegedly absenting himself from duty without proper authority on March 22, 1978 was without just and sufficient cause and on the basis of unproven charges (System Docket 380).

(2) Machine Operator Robert J. Brown 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 Machine Operator with Rail Gang No. 370. He was notified to attend trial on August 31, 1978, on the charge:

"Rule T, Rules for Conducting Transportation,
Paragraph 2:

"No employee will be allowed to absent himself from duty without proper authority nor will any employees be allowed to engage a substitute to perform his duties.

"Absent from March 22, 1978 to present."

The trial was held as scheduled, following which claimant was notified on September 14, 1978, of his dismissal from service. A copy of the transcript of the trial has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated. Claimant was present throughout the trial and was represented.

A review of the transcript of the trial shows that discipline was warranted and justified. However, the time that claimant has been out of the service should constitute sufficient discipline. We will award that claimant be restored to the service with seniority rights unimpaired, but without any compensation for time lost.

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 permanent dismissal 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 29th day of January 1982.

