

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23887
Docket Number MW-23768

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Elgin, Joliet and Eastern Railway Company

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

(1) The dismissal of Foreman Otis Fogle, Jr. for alleged insubordination was without just and sufficient cause and on the basis of unproven charges (System File VM-8-79/SAC-9-79).

(2) Foreman Otis Fogle, Jr. shall be reinstated with seniority and all other rights unimpaired and shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant Otis Fogle, Jr., a foreman, was charged with

"Insubordination in your refusal to comply with the proper order of R. W. Weber, Assistant Track Supervisor, at about 5:25 P.M. Thursday, February 1, 1979, to go from the Garage to Base 4, Kirk Yard, Gary, Indiana to get Truck 211 for use during your work assignment."

A hearing was held on March 8, 1979 and Claimant was dismissed from service on March 16, 1979.

Examination of the record before the Board establishes that the Carrier had good cause to conclude that Claimant was insubordinate on February 1, 1979. There was substantial evidence in the record to sustain the Carrier's decision to discipline Claimant. However, under the circumstances, the penalty of dismissal is too severe. Accordingly it is our determination and we so order that Claimant is to be restored to service with seniority rights unimpaired but without back pay for the time spent 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.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May, 1982.

