

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23957
Docket Number MW-23847

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(New Orleans Public Belt Railroad

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

(1) The dismissal of Bridgeman-Helper G. T. Ziegler, Jr. for alleged 'unauthorized absence on November 26, 1979, and complete indifference and disregard to prior warnings and disciplinary action in regard to your absenteeism' was wholly disproportionate to such charge (Carrier's File 013.7).

(2) Bridgeman Helper G. T. Ziegler, Jr. shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning November 29, 1979."

OPINION OF BOARD: Claimant, G. T. Ziegler, a Bridgeman-Helper, was dismissed on November 26, 1979 for an unauthorized absence that day and for "indifference and disregard to prior warnings and disciplinary action in regard to your absenteeism." A hearing was held on December 11, 1979 and the dismissal was sustained by the Carrier on December 21, 1979.

An examination of the record by the Board establishes that Claimant was absent without authorization on November 26, 1979, that he had time and attendance problems during that month prior to dismissal, and that he had been given a final warning on November 21st. There was substantial evidence in the record to sustain the Carrier's determination to discipline Claimant.

However, the penalty of termination is too severe. The record also establishes that Claimant's Foreman was aware of and to an extent accommodated Claimant's personal problems. To that extent the impact of the discipline meted out up to November 26th was softened despite the final warning. The imposition of termination under these circumstances was a sudden quantum leap in severity. Accordingly Claimant is to be restored to service with seniority rights unimpaired but without back pay for the time spent out of service. Claimant's long period out of Service should serve to emphasize that this Board's determination is a last chance warning.

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

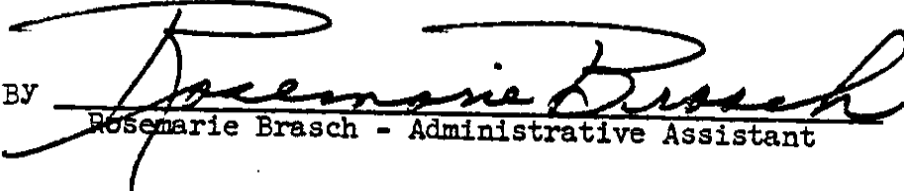
That the discipline assessed was excessive.

A W A R D

The Claim is 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 - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July 1982.

