

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24115
Docket Number MW-24133

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri Pacific Railroad Company

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

(1) The dismissal of Trackman D. G. Thomas for being absent from duty on November 6, 1979 was arbitrary, without just and sufficient cause, an abuse of justice and discretion and wholly disproportionate to the offense with which charged (Carrier's File S 310-324).

(2) Trackman D. G. Thomas shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered including holiday pay beginning November 7, 1979."

OPINION OF BOARD: Claimant entered the service of the Carrier on June 15, 1978 as a trackman. Claimant was notified to report for formal investigation on December 10, 1979; he was charged with being absent without proper authority. Because Claimant could not attend the investigation on that date, the hearing was subsequently held on January 17, 1980. As a result of this investigation Claimant was notified on January 21, 1980 that he had been found guilty as charged and that he was being dismissed from service.

The transcript of the investigation clearly establishes that Claimant was absent on November 6, 1979, the day on which he was charged with being absent without proper authority, and no additional evidence is offered for this Board's consideration to indicate that Claimant did, in fact, contact his Roadmaster, either directly or indirectly, on that day. The Board has no alternative, in view of the record before it, except to conclude that substantial evidence is present in sufficient degree to warrant that Claimant is guilty as charged.

In this regard, therefore, the only question to be resolved is whether the penalty imposed by Carrier was reasonable. This Board notes that the function of discipline is not only to punish an employee but also to provide correction and training measures for employees. This position has been upheld by this Board on numerous occasions (Third Division 19537 inter alia). Since the Carrier has made Claimant's past work record part of the investigative record on property, this Board notes an absenteeism trend on the part of the Claimant prior to this incident although he was, in fact, assessed only one 15 day deferred suspension for any prior absence without proper authority. In the present case, therefore, the principle of progressive discipline would suggest that Claimant be given one more chance to prove his worth to the Carrier as he himself claims he intends to do if given additional opportunity. This Board rules that Claimant be given this last chance and that he be returned to service, but without back pay 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 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

