

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24219
Docket Number MW-24307

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Laborer P. L. Chidester for alleged violation of 'Rules 801 and 802' was without just and sufficient cause and wholly disproportionate to the charge levelled against him (System File MW-80-45-CB/296-46-A).

(2) Laborer P. L. Chidester shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant P. L. Chidester was employed as a track laborer assigned to Extra Gang 6121 at the Carrier's Pine Bluff, Arkansas, Gravity Yard. He had been employed by the Carrier approximately one year and eleven months at the time of his dismissal on July 31, 1980, for violation of parts of Rules 801 and 802, which read in part:

"Rule 801

Employees will not be retained in the service who are ... insubordinate, dishonest, ... quarrelsome ..."

"Rule 802

Indifference to duty, or to the performance of duty, will not be condoned ...

Courteous deportment is required of all employees in their dealings with ... their subordinates and each other."

The Organization contends Claimant's dismissal was without just and sufficient cause and wholly disproportionate to the charge. Herein, the Carrier reviewed the evidence developed in the hearing and concluded Claimant's conduct was as charged. Examination of that record by this Board does not lead to a contrary result.

The testimony of the witnesses supports a finding that Claimant refused a direct order and did not return to work as instructed. With respect to the Organization objection to converting Claimant's immediate thirty day suspension to a dismissal the following day, this Board has determined that action was neither arbitrary nor capricious. Claimant's defiant conduct precipitated that decision.

This Board concurs with the Carrier's findings of fact and its decision to terminate the Claimant. The Claimant was insubordinate and unrepentent. No circumstances were presented to suggest Claimant's disobedience was warranted by any accepted consideration, such as safety. We are also unable to state that given Claimant's prior record, the Carrier's termination of his services was excessive discipline.

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 Agreement was not violated.

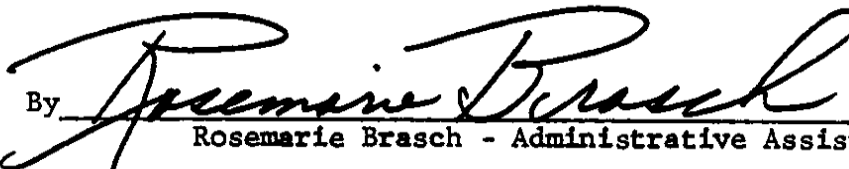
A W A R D

Claim denied.

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 14th day of March 1983.

