

THIRD DIVISION

John B. LaRocco, Referee

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

- (1) The dismissal of Track Apprentice C. A. Lucas for insubordination was without just and sufficient cause and wholly disproportionate to the charge leveled against him (System File MW-80-26-CB/283-74-1/2-A).
- (2) Track Apprentice C. A. Lucas shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a track apprentice with three years of service, was usually assigned to operate a truck at Pine Bluff, Arkansas. Because Claimant's truck was being repaired on March 10, 1980, his Foreman assigned him to perform laborer's duties with the rehabilitation gang. Though Claimant did perform those duties during the first half of his shift, he flatly refused to return to work with the gang in the afternoon. Both his Foreman and the General Foreman ordered Claimant to resume working with the rehabilitation gang. Claimant again refused and stated that he was entitled to be assigned to a more preferential or more desirable assignment. Claimant was dismissed from service.

Pursuant to his request, the Carrier held an investigation on April 17, 1980 to determine if Claimant violated Carrier Rules 801, 802 and 810. At the investigation, Claimant testified that, by assigning him to laborer's work, his Foreman was harassing him.

This Board concludes that Claimant was insubordinate. Claimant conceded that he failed to follow his supervisors' direct orders. If Claimant sincerely believed that the orders were contrary to the applicable Agreement or that he had been unfairly treated, Claimant should have first complied with the instructions and then utilized the contract grievance machinery to redress any Carrier violations.

While we find that Claimant was insubordinate, the penalty assessed in this case, was excessive and unduly harsh. Apparently, Claimant had a good prior work record. Thus, Claimant will be reinstated to service with his seniority unimpaired but without back pay.

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.

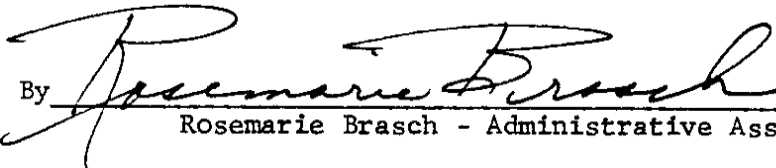
A W A R D

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 - Administrative Assistant

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

