

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24690
Docket Number MW-24940

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The fifteen (15) days of suspension imposed upon Track Laborer H. G. Peterson and the dismissal of Track Laborer R.E. Pruitt for alleged insubordination on November 29, 1981 was excessive and wholly disproportionate to the charge leveled against them (System Files TRRA 1982-land TRRA 1982-3).

(2) Track Laborer R.E. Pruitt shall be reinstated with seniority and all other rights unimpaired and both claimants shall be compensated for all wage loss suffered.

OPINION OF BOARD: The incident leading to this dispute occurred on November 29, 1981, when it is contended that the Claimants, both employed as Trackmen, refused to carry out instructions issued by their Foreman. Following a hearing on December 7, 1981, the Claimants were found to be guilty of the charge of insubordination. One Claimant was dismissed and the other suspended from the service for fifteen (15) days.

We have reviewed the record in its entirety and find substantial evidence to support the Carrier's findings. The Claimants consistently refused to carry out their supervisor's legitimate instructions. However, in view of all of the circumstances of record, we find an unreasonable disparity between the penalty imposed upon Claimants for the same offense. Having thus found, Claimant Pruitt shall be restored to service with seniority rights unimpaired, but without compensation 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 Agreement was violated.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

