

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24854  
Docket Number MW-25028

John E. Cloney, Referee

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

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

(1) The dismissal of Machine Operator R. Brazell for alleged violation of "Rule 801" was without just and sufficient cause and on the basis of unproven charges (System File MW-82-17-CB).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant Roosevelt Brazell was a Machine Operator who had over thirteen years of satisfactory service when he was dismissed by letter dated February 24, 1982 for allegedly stealing five quarts of oil from the Carrier's yard on February 23, 1982. Claimant denies the theft and contends evidence presented at a formal hearing on March 16, 1982 was insufficient to establish guilt.

This Board is of the opinion that the record developed at the hearing, which consisted largely of the testimony of two Special Agents support the Carrier's findings. Nevertheless, Claimant is an employee of long service with no history of similar misconduct. His termination was almost two and one half years ago. While this Board cannot and does not condone theft it feels in view of Claimant's tenure and prior record it can reasonably be expected that he will in the future comply with all regulations and now fully realizes dishonesty will not be tolerated. We will reinstate Claimant, with seniority, and other rights unimpaired but no 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 Employes involved in this dispute are respectively Carrier and Employes 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.

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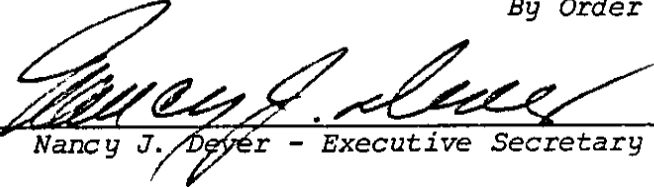
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984