

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24860
Docket Number MW-25131

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The dismissal of Laborer A. A. Ryes for alleged insubordination to Foreman C. J. Thibodeaux on March 17, 1982 was arbitrary, capricious, without just and sufficient cause and on the basis of unproven charges (System File MW-82-115).

(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 A. A. Reyes was a track laborer with six years of service when he was removed from service on March 17, 1982 for being insubordinate to his foreman in violation of Rule 80. On March 22, 1982 Claimant was sent a letter dismissing him from service. He requested a hearing and on April 22, 1982 a formal hearing was held at which Claimant and the foreman, as well as other witnesses testified.

On April 29, 1982 Assistant Regional Engineer Cox by mail advised Claimant he had reviewed the transcript of the hearing and was sustaining the March 22 dismissal.

On June 1, 1982 Cox advised Claimant by Certified Mail that he was reinstated to service as the "discipline assessed you has now served its purpose", and was to report on June 7, 1982. No conditions regarding the claim were imposed. The Letter was returned as "unclaimed" after two attempts at delivery by the Postal Service. On June 28, 1982 Cox wrote Claimant's organization, seeking its help in locating Claimant and requested Claimant report to him by July 12, 1982. Claimant did not.

In the opinion of this Board Claimant forfeited his seniority by failure to respond when he was reinstated after his dismissal.

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

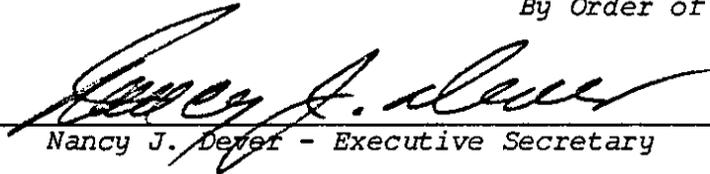
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

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