

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25840
Docket Number MW-26080

John W. Gaines, Referee

PARTIES TO DISPUTE: (*Brotherhood of Maintenance of Way Employes*
(*Chicago, Milwaukee, St. Paul and*
(*Pacific Railroad Company*

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

**(1) The dismissal of Machine Operator C. P. Staeben for allegedly not keeping a log book on Grader #102, not maintaining the machine as instructed and for allegedly falsifying required reports was arbitrary, capricious, unwarranted and on the basis of unproven charges (System Docket C #08-83/Case No. D-2577).*

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: *Claimant's new capacity with Carrier as Blade Operator commenced December 6, 1982, and was terminated by a letter dismissing him from service dated January 13, 1983. He was a Dozer Operator who alleges a long seniority. On January 24, 1983, Claimant was granted a hearing which resulted in Carrier upholding its position that a penalty was warranted for Claimant's violations and that the prior assessment of discipline by dismissal was proper.*

The letter of dismissal reads in full as follows:

"Since exercising your seniority on grader #102 you have not kept up the log book as previously instructed or maintained the machine as previously instructed. You have also falsified required reports and as a consequence you are dismissed from service with the Milwaukee Road upon delivery of this letter."

The fair and gentlemanly manner in which the hearing was conducted was conceded, and the record shows extensive coverage supporting the averments in the letter. In addition to Claimant's active participation, there were six witnesses who testified.

According to the record Claimant was kept fully aware of his responsibility to timely and accurately log, as well as to report and perform the necessary maintenance on Grader #102. There was substantial testimony given and corroborated to the effect that Claimant was sadly lacking in protecting his assignment. This lack of responsibility is evidenced by the showing in the record of his negligence and falsification in records and reports on maintenance, and the very evident, poor condition in which the Grader was kept, both electrically and mechanically.

We conclude that ample competent evidence was adduced at the hearing to support the charges.

The Organization at one point characterizes the discipline as unjustified because of seeming unreasonableness of the penalty of dismissal as imposed here. In our reasoning about the severity of this penalty we must consider several factors. The evidence was substantial that Grader #102 for which he was accountable was in a gross state of disrepair and neglect, prompting one witness to question the Grader's safety. Claimant's past record shows in a poor light in that, besides being disciplined for tardiness and absenteeism violations, he was previously dismissed from service for damage to a rented Carrier vehicle, and subsequently reinstated on a leniency basis.

With all factors considered, we find the penalty to be within the proper discretionary judgment of Carrier, and further find the Claim to be without merit.

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

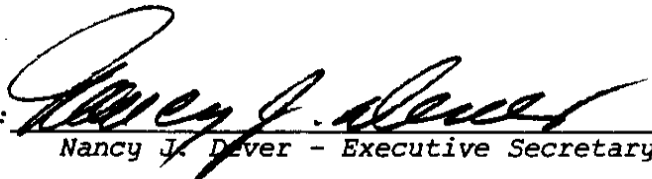
That the Agreement was not violated.

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 13th day of January 1986.

