

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Carter, Referee

Award Number 25859
Docket Number MW-25897

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri-Kansas-Texas Railroad Company

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

(1) The dismissal of Section Laborer S. Goodjoint for alleged misconduct on May 23, 24, 25, 26 and 27, 1983, was without just and sufficient cause (System File 400-57/2579).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered and expenses incurred."

OPINION OF BOARD: The Claimant herein was the laborer working with the Claimant involved in Award No. 25858.

A separate investigation was held concerning Claimant's conduct during the same period, the week of May 23 through May 27, 1983. Following a hearing conducted on June 16, 1983, on a charge similar to the one involved in Award No. 25858, Claimant was dismissed from service by notice dated June 24, 1983.

A transcript of the investigation involving Claimant has been made a part of the record. Upon review we find that none of Claimant's substantive procedural rights was violated in the manner in which the investigation was conducted. There was substantial evidence in the investigation that the Claimant and the foreman were not performing work in the manner that it should have been performed, and that there was considerable "goofing off" by the Claimant and the foreman.

We do not consider that the laborer carried the same responsibility as the foreman. Severe discipline was warranted against the Claimant herein, but permanent dismissal was excessive. We will award that Claimant be restored to the service with seniority and other rights unimpaired, but without any 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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That the Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

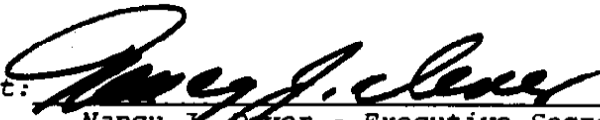
That the discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.