

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26127
Docket Number MW-26183

Peter R. Meyers, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(New Orleans Public Belt Railroad

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

(1) The dismissal of Painter T. Catalanotto for alleged 'insubordination by refusing to sign acknowledgement (sic) of "Written Warning" letter dated March 5, 1984' was without just and sufficient cause and excessive.

(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 was employed by the Carrier as a Painter. On March 5, 1984, Claimant allegedly reported late for work, and his Supervisor did not allow him to punch in. On March 9, 1984, Claimant was given a written warning for his alleged failure to report on time; Claimant refused to sign the warning as an acknowledgment of receipt. By letter dated March 13, 1984, Claimant was notified that he was dismissed from service for insubordination in connection with his refusal to sign the written warning. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the testimony and evidence in this case, and it finds that there is sufficient evidence to support the finding that the Claimant was guilty of insubordination. Even if the Claimant believed that the clock was not operating properly, he still was required to follow the direct order of his Supervisor to sign the acknowledgment of the written warning. Not doing so was clearly insubordination and subjected the Claimant to discipline. He was properly found guilty since he admitted not following the order.

Once this Board determines that the finding of guilty was proper, we next turn our attention to the type of discipline imposed upon the Claimant. This Board will normally not set aside discipline unless the action taken by the Carrier was unreasonable, arbitrary, or capricious. In this case, the Claimant had been employed by the Carrier since April 7, 1980. During his

four years of employment, he had a relatively good work record, with only an occasional warning dealing with attendance or safety. Although insubordination is often considered to be a dismissible offense without having to proceed through progressive disciplinary steps, in this case, the action taken by the Carrier was clearly unreasonable, arbitrary, and capricious. The Claimant should not have been discharged for his failure to follow the direct order to sign the acknowledgment of his written warning. Discharge was excessive and disproportionate to the alleged offense. The purpose of discipline is rehabilitation; and, therefore, the Claimant should be reinstated with seniority, but without backpay. The period since March 13, 1984, should be amended to reflect a lengthy suspension. That type of discipline should send to the Claimant the clear message that if he should receive a direct order in the future, it should be followed and grieved later rather than disobeyed.

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

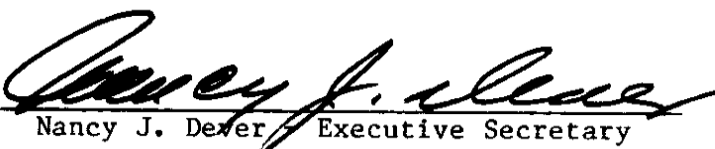
That the discipline was excessive.

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 19th day of September 1986.