

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10251) that:

1. Carrier violated the Agreement at Kansas City, Kansas when it removed R. R. McCoy from service on February 26, 1987, and

2. Ms. R. R. McCoy shall now be restored to service with Carrier with all rights unimpaired and with pay for all time lost beginning February 27, 1987, forward."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of the occurrence giving rise to the dispute herein, Claimant, with a seniority date of August 25, 1978, was the regularly assigned occupant of Traffic Controller (PAD) Position No. 5012, at a location referred to in the record as Turner Depot, Kansas City Yard, with assigned hours 11:59 P.M. to 7:00 A.M., Thursday through Monday.

On January 29, 1987, Claimant was notified to report for a formal Investigation scheduled for 9:30 A.M., February 9, 1987:

"to develop the facts and place responsibility, if any, in connection with possible violation of General Rules A and B, and Rule 26, General Code of Operating Rules, effective October 28, 1985, concerning your allegedly allowing yard engine 1565 to enter west end R-27 track (1027) through remote

control switch in your charge after track was blocked out under Blue Flag protection, Kansas City Yard, approximately 2:00 PM January 26, 1987."

The Investigation was postponed and started on February 24, 1987, recessed to February 25, 1987, on which date it was completed. On February 26, 1987, Claimant was removed from service.

Rules A and B and Rule 26, General Code of Operating Rules, referred to in the notice of January 29, 1987, and in the dismissal notice of February 26, 1987, are set forth in the record before the Board and will not be repeated here.

A copy of the Transcript of the Investigation completed on February 25, 1987, has been made a part of the record. Upon review we find that the Investigation was properly conducted and that none of Claimant's Agreement rights was violated.


There was substantial evidence in the Investigation, including the statement of the Claimant, in support of the charge. A situation was created that could have resulted in serious consequences. Severe discipline was warranted. However, the Board finds that permanent dismissal was excessive. We will award that Claimant be restored to service with seniority and all other rights unimpaired, but without any compensation for time lost while out of service. However, we will not order that Claimant be restored to the PAD position occupied at the time of dismissal as we understand that the Carrier has the prerogative to remove an employee from such a position at its discretion.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.