

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28206
Docket No. MW-28353
89-3-88-3-125

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri Pacific Railroad Company)

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

(1) The discipline imposed upon Trackman R. L. Marcelous for alleged violation of General Rule B was arbitrary, capricious, unwarranted, without just and sufficient cause and on the basis of unproven charges (Carrier's File 870233).

(2) As a consequence of Part (1) hereof, Claimant R. L. Marcelous' record shall be cleared of the charge leveled against him and he shall be allowed

'... eight (8) hours each work day, including any holidays falling therein and any overtime which would have accrued to him had he not been dismissed, beginning February 3, 1987, and continuing until reinstated to service with seniority and vacation rights unimpaired.'"

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.

This Board has carefully and completely reviewed the specifics of this case. Claimant was charged with violation of General Rule B, in that he was insubordinate. Our review of the transcript and the on-property record supports the Carrier's finding of guilt. Claimant was insubordinate as charged.

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The Board finds, however, that although insubordination was proved, the discipline imposed was excessive. The assessed discipline shall be reduced to a forty-five (45) day suspension and the Claimant shall be compensated for lost time beyond such period.

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 20th day of November 1989.