

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35922
Docket No. MW-35596
02-3-99-3-517**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 dismissal of Trackman R. R. Roanhorse for his alleged insubordination on March 11, 1998 was without just and sufficient cause, based on an unproven charge, in violation of the Agreement and excessive punishment (Carrier's File 1147494-D MPR).
- (2) Trackman R. R. Roanhorse shall now be reinstated to service with seniority unimpaired and compensated for all wage loss suffered.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant was dismissed for refusing to provide Carrier Officials with a statement about his knowledge about an injury to a co-worker. At the time of his dismissal, the Claimant had some seven years of service with the Carrier, which excludes approximately nine months of service related to a prior dismissal.

Our review of the Hearing transcript reveals no procedural shortcomings of significance. The Notice of Investigation cited the time and date as well as a description of the Claimant's alleged refusal to provide the statement in question. Rule 12 does not

explicitly require that the notice also include citations of any applicable Rules. In addition, Rule 12 does not mandate a specific time limit in which the Carrier's decision must be rendered following the Investigation. Because credibility of the testimony was not a significant issue, it was not improper for factual findings to have been made by someone other than the Hearing Officer. The Claimant's own testimony established his culpability.

On the merits of the misconduct charge, as previously noted, the Claimant admitted he would not provide a statement to the Carrier's Official on March 11, 1998 despite the fact that it was requested several times. Moreover, he went on to state only that he might provide the required statement at a later date. The record provides no justifiable basis for his action.

As a result of the Claimant's reinstatement from a prior dismissal, following a period of some nine months out of service, he resided at Level 4 in the Carrier's UPGRADE disciplinary program at the time of the instant misconduct. The nature of the misconduct called for Level 5 treatment by itself. The proper level of discipline, from the standpoint of progressive discipline, would also be Level 5.

Overall, therefore, we find the record to contain substantial evidence in support of the Carrier's disciplinary action.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of January, 2002.