

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37556  
Docket No. CL-38167  
05-3-04-3-70

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

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Sand Springs Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-13072)  
that:

1. Carrier violated the provisions of the current working agreement when on or about January 10, 2003, the Carrier allegedly dismissed Mr. R. H. Vawter from service with the Sand Springs Railroad.
2. Carrier shall now be required to rescind any discipline issued, remove any entry relative thereto from Mr. Vawter's personal record and reverse any negative effect upon Mr. Vawter's seniority."

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 dishonesty in connection with the facts surrounding his physical ability to return to work. Our review of the very unique facts of this record convinces us that the disciplinary penalty of dismissal should be modified. The Claimant shall be reinstated to the seniority roster but without any backpay. The Claimant's time off payroll should be reflected as a disciplinary suspension for just cause.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of July 2005.