

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22965
Docket Number **MW-23036**

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(The Kansas City Southern Railway Company

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

(1) The dismissal of laborers Jams Petterway, D. R. Gates and Stanley **Freeman** was without just and sufficient cause and wholly disproportionate to the offense with which charged (Carrier's File 013.31-191).

(2) Laborers Petterway, Gates and Freeman shall be reinstated to their respective former positions and they shall be compensated for all wage loss suffered, including holiday pay, beginning March 2, 1978."

OPINION OF BOARD: Track laborers **Petterway**, Gates, Freeman, and **Snell** were discharged from service for walking off the job on March 2, 1978. The record shows that on the morning of March 2, 1978, there was a light mist or rain falling. Some of the men on Carrier's Extra Gang 491 did not want to work in the rain. The **foreman** told the men involved in this claim that if they left the job, **it would** be as though they had voluntarily resigned from the railroad.

They left the job in face of these instructions. When they returned to work on Monday, March 6, 1978, they were told that they no longer worked for the railroad. The Union requested a hearing into the matter. As a result of that hearing, all the men were discharged.

The hearing was held on April 7, 1978. The transcript of that hearing is a part of the record of this case. That record reveals that claimants were given a full and fair hearing and that all of their rights were afforded them.

During the appeal process of this case, **employe Snell** was reinstated on a leniency basis. He is not a claimant in this case before the Board at this time. Claimant **Petterway** has also accepted **reinstatement** on a leniency basis, but remains a **claimant**. Claimants Gates and Freeman were also offered reinstatement on a leniency basis. They refused to accept that arrangement and chose to press their claim to this Board. That is their choice to make. The Union is claiming that the Carrier has been exceedingly harsh-in its treatment of the men involved in this incident.

The record of this case clearly reveals that Carrier in this instance was correct in administering severe discipline to claimants. There is no question that claimants did decide that they did not want to work in the rain and left the property. This behavior cannot be tolerated by the railroad, nor should it go unpunished.

From the whole record before us, it is the opinion of this Board that claimant Petterway was correct in accepting reinstatement **on** a leniency basis and that claimants Gates and Freeman should be reinstated to their former positions, but without back pay. **On** occasion, this Board has taken the position that time held out of service is sufficient to impress an **employee** with the severity of his conduct. That concept is appropriate in this case.

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 Opinion of the Board.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.