

Award No. 10974
Docket No. MW-10633

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) The dismissal of Section Laborer Guadalupe G. Escobeda from service on June 3, 1957 was improper, without just and sufficient cause and in violation of the effective Agreement.

(2) Section Laborer Guadalupe G. Escobeda now be reinstated to service with seniority, vacation and other rights unimpaired and that he be reimbursed for all wage loss suffered because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employees and The Texas and Pacific Railway Company.

The Claimant was a Section Laborer. The Claimant failed to report for work May 31, 1957. There is evidence that the Claimant took a trip and his car broke down. Claimant's friend testified that he notified Foreman Rich that Claimant would be unable to report for work. Rich testified that he was not notified. Claimant was dismissed from service. There was evidence that he was absent three times before without permission. He had been warned. Petitioner contends that the discipline is improper and without just cause.

The Carrier was justified in believing that the absence was premediated. Claimant did not tell the truth about former absences without permission. It is also noted that two of the former absences occurred immediately following a holiday as in this case. Based upon the facts before us, we believe that the penalty was not too severe.

For the forgoing reasons we believe the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1962.