



Award Number 17492

Docket Number MW-16701

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES**

SEABOARD AIR LINE RAILROAD COMPANY

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

- (1) The Agreement was violated when B&B Foreman A. A. Greenway dismissed Cook A. E. Harterson through the issuance of Form PR-2 dated May 27, 1965. (Carrier's file PD-H G-10-2)
- (2) Mr. A. E. Harterson be compensated for all monetary loss suffered by him from May 26, 1965 through June 27, 1965."

OPINION OF BOARD: Claimant was regularly assigned Cook on Carrier's B&B Gang #3 at a time when the cars of the work train were being moved from Hawthorne, Florida to Wildwood, Florida, with intermediate point at Ocala, Florida, approximately midway. Claimant was advised by the foreman that the cars were being moved that day, May 26, 1965, and the foreman also made some remarks about the location of the evening meal upon which there is no agreement as to what was said.

Claimant departed Hawthorne in his private automobile at 3:05 P.M. and was seen on the highway driving toward Wildwood at about 5 P.M. by the gang as they returned from Wildwood to Ocala. He was not seen by the Foreman after 11 A.M. until the next morning when he was advised that he had been dismissed, effective the prior date at 3 P.M. The Organization protested this action and a hearing was held.

As result of investigation Claimant was advised that he could return to work on June 28, 1965 and that the time lost, those working days from May 26, 1965 through June 27, 1965, would be applied as discipline. Claimant did return to work and this grievance was progressed asking compensation for all monetary loss from the discipline.

The Organization argues that Claimant was dismissed for one reason, absent without leave, but then disciplined for a wholly separate reason, failure to prepare the evening meal, and that failure to so advise Claimant on his dismissal by "PR-2 Form" or in some other manner in writing is a violation of Rule 6 of the Agreement. This is an interesting argument with considerable merit, but was not raised on the property and therefore cannot be considered here.

It is further urged that Claimant was with the cars until 3:05 P.M. and that the reason he was not with them at meal time was through mis-

understanding of the directions of the foreman or having been misled by those instructions as well as misinformation gathered from the crew. All of these facts and allegations were brought out at the hearing on the property.

Carrier made a finding of fact on the property as a result of a hearing in investigation of the incident that Claimant was absent without permission on the date in question. This finding was conveyed to Claimant in writing by letter dated June 21, 1965 signed by H. E. Richardson, Division Engineer, for Carrier.

It is a settled rule that this Board may not weigh evidence, appraise credibility of witnesses nor substitute its judgement for that of Carrier unless there is showing that Carrier's disciplinary action was arbitrary, capricious, discriminatory or done in bad faith. Such has not been shown in this record.

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 Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.