

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20030
Docket Number MN-20149

Dana E. Eischen, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Northwestern Pacific Railroad Company

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

(1) The dismissal of **C. D. Dennison** from service for alleged violation of Rules 801, 810 and 811 was without just and sufficient cause and on the basis of unproven charges (System File NWP file **011-181 (D)**).

(2) Mr. **C. D. Dennison** be reinstated with seniority, vacation and all other rights unimpaired and that he be compensated for all wage loss suffered in accordance with Rule 25.

(3) The Carrier shall also pay the claimant six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

OPINION OF BOARD: Claimant, a carpenter-helper on B&B Gang No. 10 headquartered in camp trailers at Island Mountain, California, was dismissed from the service of Carrier on January 5, 1972 for alleged violation of the following rules of the General Rules and Regulations of the Carrier:

"Rule 801 - part thereof reading:

'Employees will not be retained in the service who are careless of the safety of themselves or others, indifferent to duty, insubordinate . . .'

"Rule 810 - as reading:

'Employees must report for duty at the prescribed time and place, remain at their post of duty and devote themselves to their duties. They must not absent themselves from their employment without proper authority.'

"Rule 811 - reading as follows:

'Employees must not absent themselves from their places, substitute others or exchange duties without proper authority.'

An investigative hearing into the charges was held on January 17, 1972, in which Claimant and his representative participated. As a result of the investigation, the dismissal **was** affirmed by letter dated January 26, 1972. The claim was **pro-**ceased **through** the appellate steps without a change in the decision and **so comes** to this Board.

The threshold question for this Board is a procedural objection advanced by Carrier, viz, a motion to dismiss on the grounds that the appeal was not perfected in the timely manner prescribed by Rule 25 of the Agreement between the Carrier and Petitioner. The **uncontroverted** record clearly shows that this procedural objection first was raised in the Carrier's Ex Parte submission to this Board. Under our rules and a long line of awards, such a procedural issue raised for the first time at this level comes too late. Accordingly the motion to dismiss must be and is denied. (See Awards 10638, 11617, 11939 and 12853).

Turning now to the merits of this claim, the alleged violations flow from the following facts: On January 4, 1972, Claimant was engaged in cleaning duties around the oil shed. While performing this operation, Claimant was instructed by B&B Foreman Mahn, his **immediate supervisor** to wear his hair net. Claimant informed Mahn that he did not wish to wear his hair net, which was his private property and not Carrier-issued safety equipment; and, in fact, by word and deed refused to wear his hair net. The foregoing facts are not contested **on** the record, but subsequent developments are subject to **conflicting** versions therein.

Claimant alleges that **Mahn** instructed him to "go home",, which instruction literally performed by departing the job site for his **residence**. **Mahn** testified that he advised claimant to return to his headquarters **trailer** at Island Mountain. In any event, Claimant's departure from his duty post in these circumstances apparently constitutes the **gravamen** of the charged violations of Rules 810 and 811.

A careful review of the record and reading of the Rules in question indicate that while there are some ambiguities regarding the issues of safety and unauthorized absence, there is no doubt that Claimant refused to follow the orders of his superior. It is a recognized principle of arbitral law, and especially by this Board, that the duty of an **employee** is to obey a reasonable order; and, if he disagrees with such order to seek redress through the grievance machinery of the agreement. (See Awards 7921, 5170, 4886, 8712, 15828, 16286). There are not sufficient mitigating **circumstances** presented on this record to support a conclusion other than the inescapable one that Claimant's conduct amounts to insubordination. Whereas the penalty is severe, there is substantial evidence in the record to support the imposition of discipline and the action of the Carrier with respect thereto cannot be deemed arbitrary, capricious, or **an** abuse of discretion.

In view of the foregoing considerations, we will dismiss the claim.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.