

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20505

Docket Number MW-20620

Robert A. Franden, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Port Terminal Railroad Association

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

(1) The dismissal of Laborer L. J. Batiste for allegedly violating Rule No. 45 was improper, without just and sufficient cause and on the basis of unproven and vague charges.

(2) Laborer L. J. Batiste be reinstated with seniority, vacation and all other rights unimpaired, the charges against him be stricken from his record and he be compensated for all wage loss suffered, all in accordance with Rule 11(E).

OPINION OF BOARD: This claim is based on the alleged improper dismissal of Claimant for a violation of Rule 45, which reads as follows:

Rule 45

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

Employees must report for duty at the prescribed time and place, and devote themselves exclusively to their duties during prescribed hours.

Employees subject to call for duty will be at their usual calling places or leave specific information as to where they may be located.

The Organization alleges that the charge of the rule violation was both vague and unproved.

The charge by the Carrier was made by letter dated May 9, 1973, which letter reads as follows:

PORT TERMINAL RAILROAD ASSOCIATION

Box 9504

Houston, Texas 77011

May 9, 1973

'Mr. L. J. Batiste #4418
Track Laborer - PTR
Houston, Texas

Dear Sir:

The Association's records reveal you have absented yourself from the service of the Association without proper authority on numerous occasions, and that you have not requested nor has a leave of absence been granted in your behalf.

In line with Rule No. 45 of the Port Terminal Railroad Association Rules and Regulations, your employment with the Association as a Track Laborer in the **Maintenance** of Way Department is terminated effective this date.

Please turn in such Association property as you may have in your possession after which all monies due you will be paid.

Yours truly,

/s/ W. T. Klindworth
Roadmaster, PTR

cc: B. P. Sowers
L. R. Tillery
Timekeeper."

The Organization requested a hearing in accordance with the applicable provision of the agreement which hearing was had on May 31, 1973. The **transcript** of said hearing is a part of the record.

The Rule governing discipline is Rule 11 of the Agreement:

RULE 11

(a) Employees disciplined or dismissed will be advised of the cause for such action in writing within ten (10) days.

(b) An employee disciplined or who feels unjustly treated, shall upon making a written request, individually or through the Local **Chairman** or General Chairman to the Engineer, Maintenance of Way, within ten (10) days from date of advice, be given a fair and impartial **hearing within** ten (10) days thereafter and decision will be rendered within twenty (20) days after completion of hearing. At the hearing the employee may

" be represented by duly accredited representatives of the Brotherhood or an employee in active service under this Agreement. He shall be privileged to secure the testimony of witnesses in his behalf; however, the attendance of such witness called by him shall be without expense to the Association. The time limits in this rule may be extended by mutual agreement.

(c) **An** employee dissatisfied with a decision will have the right to appeal in succession up to and including the highest **official** designated by the management to handle such cases, if notice of appeal **is** given the official rendering the decision within ten **(10)** days thereafter. The right of an employee to select his representative is recognized.

(d) When transcript of evidence given at the hearing is made, a copy will be furnished the employee and his representative.

(e) If the charge against the employee is not sustained it shall be stricken from the record. If by reason of such unsustained charge the employee has been removed from position held, reinstatement will be made and he shall be compensated for the **wage** loss, if any, suffered by him.

(f) This **rule** will not apply to employees with less than sixty (60) days continuous service.

(g) Prior to the assertion of grievances as herein provided, and while **questions** of grievance are pending, there will neither be a shutdown by the employer, nor suspension of work by the employee.

The above quoted Rule 11 is somewhat different from many agreements in this industry in that when an employee is disciplined or dismissed he need only be "advised of the cause for such action in writing within ten (10) days". The employee may then request a hearing.

The record reflects that the Carrier complied with the requirements of Rule 11 in assessing discipline in this case and that the claimant then exercised his right to request a hearing.

We are urged by the Organization to hold that the record does not sustain the findings of the Carrier at the hearing, to-wit: "that the claimant absented himself from the service of the association without proper authority on numerous occasions".

A review of the records does not reflect that the findings of the Carrier are without **evidenciary** basis from which such a conclusion could reasonably be drawn. We hold that sufficient evidence was adduced to support the discipline rendered 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 Agreement was not violated.

A W A R D

Claim denied.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.