

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number.21597
Docket Number MW-21688

Robert W. Smedley, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The dismissal of Track Repairman R. **T. Harper** was
unwarranted and without just and sufficient cause **/System** File 1-12
(103)/D-105824 E-306-18/.

(2) Track Repairman R. T. Harper be reinstated with
seniority, vacation and all other rights unimpaired and he be com-
pensated for all wage loss suffered.

OPINION OF BOARD: Claimant, Ray T. Harper, was dismissed from
service on December 11, 1974, for "failure to
perform his assigned duties." At that time he was 27 years old and
had been employed with carrier six months as a track repairman. It
was somewhat rainy that day, but not enough that the gang was wearing
raingear. Harper went to the truck for shelter while the others
worked. He says he had a cold and, recently having a tooth extracted,
was afraid he would sneeze and "blow stuff through the hole." The
foreman said, "that will be all of it for you" and "**I'll** take you
to the **barn.**"

Rule 27(a) of the Agreement stipulates a worker will "be
informed of the cause" of discipline in writing if requested. This
was not requested by claimant. What he did request was a hearing
pursuant to 27(b), and this was held January 3, 1975.

The main complaint below was that claimant was not properly
charged. Examination of the Agreement reveals that a track **repairman**
need not be charged or even informed of the cause of discipline unless
he so requests. On appeal the main contention is on the merits,
saying that the discharge was unwarranted and too severe. **We** could
well refuse to consider the merits because of this shift in emphasis,
but the hearing transcript does go into the facts in some detail, so
this is not a clear-cut case of matter not broached on the property.

But on the merits, the discharge must be sustained. The hearing was adequate and the opportunity was there to back up the tooth problem with some kind of medical proof. This was not done. We are not impressed with uncorroborated malady claims. Third Division Award No. **21514**. A **letter** from the dentist or **a doctor would** have helped. Refusal to work is, of course, grounds for discipline, even discharge in a proper 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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1977.

