

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21712
Docket Number MW-21926

John P. Mead, 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 Truck Driver M. H. Perez (4345) was without just and sufficient cause and on the basis of unproven charges.

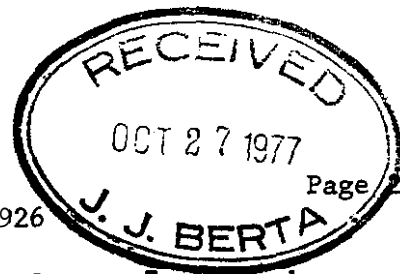
(2) Claimant Perez shall be allowed eight (8) hours' pay for each work day and holiday beginning with January 26, 1976 and continuing until he is reinstated to service with **seniority** and vacation rights unimpaired.

OPINION OF BOARD: Claimant was dismissed from service of the Carrier on February 3, 1976, for failing to protect his assignment on January 26, 27, 28, 29, 30, and February 2 and 3, 1976, in violation of Carrier's Rules and Regulations. A hearing was requested and held on February 18, 1976, and by letter, dated February 23, 1976, Claimant was advised that his dismissal from service was reaffirmed.

A review of the record indicates that Claimant had contacted his foreman by telephone, on the morning of January 20, 1976, and insistently requested that he be given permission to be absent from his assignment for a few hours on several forthcoming days to take medical treatments. The foreman advised Claimant that he could not grant such a request, but advised Claimant that he should discuss his request with certain named supervisors if he wished to pursue his request. The record further shows that Claimant did not follow the advice of his foreman but, instead, unilaterally absented himself from his entire tour of duty on the above noted dates, thus resulting in his dismissal from service. The record does contain evidence in the **form** of a letter from a Miguel **Soler**, M.D., that Claimant was in his office on January 26, 27, 28, 29 and 30, 1976 for diathermy treatments and was in his office on February 2, 1976. The Board finds the record contains sufficient evidence to support disciplinary measures.

We **now** consider the appropriateness of the dismissal penalty which, in part, was based on **Claimant's employment record** with Carrier.

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Claimant commenced work on March 23, 1970 and on August 7, 1970. he was dismissed from service for absenting himself from his assignment. On January 20, 1971, he was reinstated **on** a leniency basis and the only other entry in his record was a letter of warning concerning absenteeism in 1972. However, between that time and the instant case, Claimant's record is without entry.

It is the Opinion of the Board that the discipline imposed by Carrier has served its purpose. The Board is of the opinion that the Claimant be returned to service without back pay, but with all other rights unimpaired and that the disciplinary **action** be made a part of Claimant's record. The Claimant should understand, without any question, that it is absolutely mandatory and necessary that he maintain a reasonable attendance record and that he be a dependable **employee** of the Carrier. This is the final opportunity for Claimant to **correct** his improper conduct. The Board expects him to fully live up to the obligation of his job.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in our Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.