

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21729
Docket Number **MW-21746**

Robert W. **Smedley**, Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of **Trackman D. W. Bilby** on **June 16, 1975** was without just **and** sufficient cause and on the basis of unproven charges (System File B-1173).

(2) The claimant's record shall be cleared of the charge and he shall be allowed payment as stipulated in Agreement Rule No. 91 (b)(6).

OPINION OF BOARD: The issue before us is the propriety of a penalty for absenteeism.

Claimant was dismissed **June 16, 1975**, for unexcused absences. His dismissal was confirmed after hearing conducted July 11, 1975. The evidence was that Claimant was absent **June 12 and 13, 1975**. He **claimed** to be sick, stating "My heart was hurting . . . I was having problems with **my** heart." He said he went to a doctor but refused to give the doctor's **name, taking** the position **that** this was his own private affair. He did **not** call **in on** June 12, saying he was physically unable, but did call on June 13, leaving the message with another **trackman**. He had a prior record of unexcused absences. Through effort of the General Chairman, in October Carrier agreed to reinstate Claimant. He returned to work on November 24, 1975.

The claim objects to wrongful discharge. This issue was decided after hearing. Then the Claimant was reinstated which altered the discharge penalty to a suspension of about four months. Carrier made a strong prima facie case for the discipline. Claimant's defense was not impressive, centering on illness but refusing to provide medical corroboration. Awards 21597 and 21514 (**Smedley**). Given the reduction of penalty granted to Claimant, we cannot fault either the amount of discipline or the substance and procedures leading thereto.

In view of our decision on the merits, it is not necessary to pass on the other issues raised by the parties.

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. Paulke
Executive Secretary

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

