

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21835  
Docket Number MW-21977

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company

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

(1) The dismissal of Trackman Roy R. Revely 'account absent from duty without permission on November 14 and November 28, 1975' was excessive, grossly disproportionate to the offense with which charged, totally in disregard of extenuations for such absences and thereby in violation of the Agreement (System File MC-1527/BI 1-7-76).

(2) The claimant's discipline shall be reduced to an overhead suspension and he shall be restored to service with pay for all time lost, and thus be in line with other discipline administered to other employees on January 7, 1975:

OPINION OF BOARD: This claim involves dismissal of Trackman Ray R. Revely because of "absence from duty without permission on November 14 and November 28, 1975".

The Board finds that the investigative hearing held in this matter was conducted in a fair and impartial manner and supported the charges made by the Carrier as to the absences.

The Organization questions the severity of the discipline as well as the reference to the employee's previous disciplinary record.

Determination of guilt as to the alleged offense in question is confined to evidence developed at the investigative hearing. It is, however, entirely reasonable and fitting for the Carrier to weigh the past record of the employee in assessing the degree of penalty. As stated in Award No. 20099 (Sickles):

"The Organization properly points out that an employee's past work record may not be considered in determining guilt of the charges brought against him, but there is no evidence of record to suggest that such was the case here. However, this Board has repeatedly determined that a Carrier may, and should, consider a personnel record in assessing the amount of discipline to be imposed."

**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; end

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST :

A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978;

