

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDMSION

Award Number **31960**
Docket Number MW-22028

James F. Searce, Referee

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

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

(1) The dismissal of **Trackman Meredith** Austin, Jr. was unwarranted and without just and sufficient cause (System File B/I 2-11-76/MG-1539).

(2) **Trackman** Meredith Austin, Jr. be reinstated with seniority and **all** other rights unimpaired and he be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant in this case was dismissed from Carrier's service on February **23, 1976** following a hearing on the charge of "being absent from duty without permission on Monday, February 2, and Tuesday, February **3, 1976.**"

The main thrust of petitioner's **argument** both on the property and before this Board is that because of certain mitigating circumstances which are present in this case, the assessment of dismissal is excessive.

Carrier has countered that unauthorized absences are serious occurrences and, in this case, claimant had a prior record of absence without permission in **1975** for which suspension plus probation had been imposed.

We are acutely aware of our function and authority when reviewing discipline cases. However, we are also cognizant of our responsibility to guard against an abuse of the liberal discretion which Carriers have in the assessment of discipline when we can say from the record that it clearly appears that the action taken in a particular case was unjust, unreasonable or excessive.

In **this** case the record - both the instant situation and the one prior assessment of discipline - do not appear to present the **picture** of an **employee** who is habitually absent without permission. Therefore, it is our decision that discipline by dismissal was excessive.

Therefore, claimant should be reinstated to service, subject to his ability to meet Carrier's physical requirements, with seniority unimpaired but without any payment for time lost. Claimant must also be aware - and he is so cautioned - that repetition of this type of action will surely lead to permanent removal from Carrier's employ.

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 assessed was excessive.

A W A R D

Claim sustained to the extent indicated above.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.