

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21963  
Docket Number MW-22075

James F. Searce, Referee

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

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

(1) The Agreement was violated when Trackman Troussant D. Lett was dismissed on the charge of 'being absent from duty without permission on February 2, 1976.'

(2) The Agreement was further violated when said dismissal was effected without benefit of a fair hearing as stipulated within Agreement Rule 21(a).

(3) As a consequence of (1) and/or (2) above, Claimant Lett shall be reinstated to service and paid for all days and any time lost (System File MG-1533---B/I 2/11/76)."

OPINION OF BOARD: The claimant in this case was dismissed from Carrier's service following a formal hearing on the charge of being absent from duty without permission. Claimant did not appear for the hearing.

Petitioner alleges that claimant was not properly notified of the hearing and, in any event, dismissal from service for being absent without permission on one day is excessive discipline.

Our review of the record shows that effective personal notice was given to Claimant Lett of the scheduled hearing. He cannot frustrate the holding of a hearing by the simple expedient of staying away. As was said in Award No. 15059 of this Division: "\* \* \* we are of the opinion that an employee who fails to appear at a hearing, in the absence of good cause, is derelict."

There is sufficient evidence in the hearing record to support the charge of being absent without permission on the date in question.

As for the quantum of discipline, we note from the record that claimant entered Carrier's service on January 20, 1975. In just over one year, he had been assessed formal discipline in September 1975 and again in January 1976. Based upon the proven violation in the instant case, coupled with the obvious record of repeated similar violations, we can not find that the Carrier was arbitrary, capricious or excessive in their termination of claimant's employment. We will, therefore, deny the claim.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

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