

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22002**
Docket Number **MW-21982**

Dana E. Eischen, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(The **Alton &** Southern Railway Company

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

(1) The dismissal of Truck Driver Clarence Wade was **un-**warranted and without just and sufficient cause (System File **A&S 1976-2/K 1638-54**).

(2) Truck Driver Clarence Wade be reinstated with seniority, vacation and all other rights unimpaired **and** he be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was discharged following a hearing into charges contained in a Notice dated January 9, 1976 and reading in pertinent part as follows:

"Arrange to report to the Conference Room, First Floor, General Office Building, The **Alton &** Southern Railway Company, 1000 South 22nd Street, East St. Louis, Illinois at 10:00 a.m. January 15, 1976 for formal investigation to develop the facts and place your responsibility, if any, in connection with your failure to comply with instructions given you by Superintendent **W. B. Needham**, January 7, 1976 to return to work at 12 midnight that date and absenting yourself from your assignment without proper authority January 9, 1976."

Upon thorough review of the record we find more than substantial evidence to support a finding that Claimant was culpable as charged. The record is clear that after telling Carrier's Superintendent **Needham** that he would return to work at Midnight on January 7, 1976 Claimant did fail to return to his assignment. We also find **from** the record that Claimant failed to report. for his **assignment on** January 9, 1976 and did not have proper authority to be absent.

Considering the quantum of discipline assessed Claimant, permanent dismissal from service, we find that Claimant had previously been disciplined through the serving of an actual 30 day suspension for leaving his **assignment** without permission. While this claim was being progressed on the property, Carrier offered to reinstate Claimant without pay for time lost; provided Claimant would report to the Superintendent and express a willingness to protect his assignment in the future and to also obey the instructions of his supervisor. Claimant **rejected** this offer for reasons known only to himself. Had Claimant accepted the offer of reinstatement at the time it was made he could have avoided further loss of pay.

Upon consideration of the entire record we conclude that Claimant should be given another opportunity to prove his interest and ability in being a dependable **employee**. Accordingly, we order that he be reinstated to service without pay for time lost. We would be remiss, however, if we did **not** place Claimant on express notice that if he desires to retain his job with Carrier future conduct of the type for which he was discharged in this case cannot be tolerated.

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 should be modified as indicated in the Opinion.

A W A R D

Claim sustained to the extent indicated in the **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1978.