

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22298
Docket Number MW-22341

Louis Yagoda, Referee

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

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

(1) The dismissal of **Trackman** Gary Frazier for being allegedly absent without authority **on** September 7 and 8, 1976 was without just and sufficient cause; on the basis of unproven and **disproven** charges; extremely disproportionate to the offense with which charged **[System File C(No)-D-340/MG-16957]**.

(2) Claimant Frazier shall now be extended the benefits of Agreement Rule 24(e)."

OPINION OF BOARD: The facts in this case are that Claimant Frazier performed **no** service **on** his **assignment** on the dates in question; that he had not attempted to obtain **permission** to **be** absent from his assignment **on** the dates in question; that he had not notified any Carrier representative concerning his absence **on** the dates in question; that he offered **no reason** for his absence when he did return to service and that Claimant had a record of prior instances of **unauthorized** absences for which discipline had been administered in progressive increments.

Based upon our review of the entire record in this case, we **are** not at liberty to substitute our judgment for that of the Carrier; and therefore, we can find no basis **on** which to **overturn** the discipline as assessed. While dismissal from service is a harsh penalty, this record - including the prior similar infractions - supports the action as taken.

We **must** deny the claim as presented.

Because of our **having** reached this conclusion, it is not necessary that we address ourselves to the procedural contentious advanced by Carrier.

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:

A.W. Pumber
Executive **Secretary**

Dated at Chicago, Illinois, this **31st** day of **January 1979**.