

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Abraham Weiss, Referee

Award Number **22328**
Docket Number **MW-22382**

PARTIES TO DISPUTE: (**Brotherhood** of Maintenance of Way **Employees**
(Port Terminal Railroad Association

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

(1) The dismissal of **Trackman** R. J. Johnson was without just and sufficient cause and wholly disproportionate to the offense with which charged.

(2) **Claimant** R. J. Johnson shall be allowed eight (8) **hours'** pay at the **trackman's** straight-time rate for each work day and holiday within the period beginning February 1, **1977** and ending on the date he is reinstated with seniority and vacation rights unimpaired."

OPINION OF BOARD: Claimant, a **trackman in** Carrier's Maintenance of Way Department, was dismissed, following a **formal** hearing, **for** leaving his **assignment** without permission on **January 31**, about two hours after he **reported** for duty. At the time of the incident, Claimant had been in **Carrier's** service for five months.

Neither on January **31** **nor** on the following day, when he reported for duty, did Claimant state he was ill or was going to see a doctor. **Several** witnesses testified to this effect.

There was **a conflict in testimony** as to whether **Claimant** had received permission to leave. Claimant asserted his **foreman** had granted such permission; his **foreman** denied it, adding that Claimant gave no reason for wanting to leave.

At the hearing, Claimant's representative presented a **doctor's** certificate dated January **31**, which indicated that he had been treated for hypertension on that same day. **Carrier** stated that it knew that Claimant suffered **from** hypertension at the time he was **employed**.

The record also contains testimony by the Assistant **Train-**master that his questioning of Claimant (in the presence of the Roadmaster) on February 1 elicited from Claimant the statement that he left his assignment the day before because "**he** was cold"; that he had not told his **foreman** that he was **ill** or that he had business to attend. At the time of the questioning, Claimant made no reference to visiting **his** doctor the day before **nor** did he furnish a doctor's certificate.

No witnesses **were** called in Claimant's behalf, although he testified at the hearing that six fellow **employees** heard the foreman approve his leave.

Claimant gave no reason for wanting to leave at the time he left his job. The doctor's certificate was first introduced **at** the formal hearing, by Claimant's representative.

The record indicates a previous history of difficulties during **Claimant's** relatively brief period of service with the Carrier.

Under the circumstances, we do not consider management's action to be arbitrary or capricious, and must, therefore, support **Carrier's** decision.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.
