

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22480
Docket Number MW-22535

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The discipline (reprimand) assessed Extra Gang Laborer E. P. Borrego by letter dated March 24, 1977 was discriminatory, unjust and based upon arbitrary and capricious charges (System File D-8-77/MW-8-77).

(2) The dismissal of Extra Gang Laborer E. P. Borrego on April 8, 1977 was unjust, improper and based upon arbitrary charges (System File D-10-77/MW-9-77).

(3) Extra Gang Laborer Borrego be reinstated back to service with all rights unimpaired, his personal records be cleared of the charges placed there against him and he be compensated for all wage loss suffered in accordance with the provisions of Rule 28 (d)."

OPINION OF BOARD: At the threshold, we are confronted with the contention of the Carrier that the claim as submitted to the Board is improper as two separate claims handled and progressed on the property, as result of two separate disciplinary investigations, were combined in one submission by the Organization.

We find no proper basis for the contention of the Carrier. The combining of the claims for presentation to the Board did not expand or alter the claims. The Carrier has in no way been misled. The Carrier's contention in this respect is denied, and the claim will be disposed of on its merits.

Claimant was a short-term employee. He commenced working for the Carrier on June 21, 1976, was laid off in force reduction on November 12, 1976, and recalled to work on March 7, 1977. On March 15, 1977, he was notified to attend an investigation on charge of "allegedly refusing to comply with work instructions as directed by his immediate

supervisor at or about 11:00 A.M., March 10, 1977." Formal investigation was conducted on March 18, 1977. On March 24, 1977, he was notified that as a result of the investigation he had been found guilty as charged and that:

"...effective this date, this letter as a reprimand has been placed in your personal record file for your responsibility in connection therewith."

On April 22, 1977, the General Chairman wrote the Superintendent in part:

"Following the investigation held March 18, 1977, Mr. Jamieson, Roadmaster who conducted the investigation held a meeting with Foreman Owens, Mr. Borrego and myself, as representative. After considerable discussion, it was agreed that Mr. Borrego would be returned to service the following Monday, March 21, 1977, with the understanding that the foreman and Mr. Borrego would resolve their differences and work as a team."

Whether or not the incident involved in the March 18, 1977 investigation was settled, the fact remains that there was substantial evidence introduced in the investigation to sustain the charge against the claimant. Therefore, Part (1) of the claim is denied.

Following claimant's return to work on March 21, 1977, another charge was issued against him on March 29, 1977, for "allegedly being absent from duty without proper authority since March 22, 1977." Investigation of this charge was conducted on March 31, 1977. A review of the transcript of that investigation, including claimant's statement, shows conclusively that he had been absent since March 22, 1977, without authority of the foreman or any officer of the Carrier. If claimant considered that he was being harassed by the foreman after returning to work on March 21, 1977, his recourse was to perform the work as instructed and then complain through the grievance procedure. This Board has held in numerous awards that unauthorized absence from duty during assigned hours is a serious offense, often resulting in dismissal from the service.

Parts (2) and (3) of the claim are also denied.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1979.