

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22614
Docket Number MW-22710

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The dismissal of Track Laborer James D. Morrison was without just or sufficient cause; ves on the basis of an unproven charge; was exceedingly disproportionate to the offense withwhich charged (System File TERRA-1978-2).

(2) The Carrier shall restore Claimant Morrison to service and extend to him **all** the other benefits and remedies prescribed in Rule 24(d)."

OPINION OF BOARD: Claimant, a track laborer, with about thirteen months service, was notified on September 29, 1977, to attend an investigation on October 4, 1977:

"..at which you **will** be charged with your responsibility if **any**, in connection with your failure to protect your assignment since September 26, 1977."

Investigation was conducted on October 4, 1977, as scheduled, but claimant did not appear. On October 14, 1977, he was notified of his dismissal from the service. On November 10, 1977, the Organization advised the Carrier's Assistant Chief Engineer that claimant had stated that he had to be out of town due to an emergency and, therefore, was unable to attend the October 4, 1977, investigation.

At the request of the General Chairman, another hearing was scheduled for November 15, 1977. Claimant was present at the November 15, 1977, investigation. Claimant was notified of his dismissal from service on November 17, 1977.

Copies of the investigations conducted on October 4, and on November 14, 1977, have been made part of the record.

The Board has carefully reviewed the entire record and finds that none of claimant's substantive procedural rights was violated in the handling of the dispute. There was substantial evidence adduced to show that claimant was absent from September 26, 1977, and that he did not have permission from or notify anyone in authority of the reason for his absence. Also, claimant's work record during his short service with the Carrier was far from satisfactory.

There is no proper basis for the Board to interfere with the discipline imposed.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1979.

