

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22659
Docket Number ~~MW~~-22773

Paul C. Carter, Referee

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

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

(1) The dismissal of Track Laborer Eugene Luster was without just or sufficient cause; on the basis of unproven charges; exceedingly disproportionate to the offense with which charged (System File **TRRA 1978-1**).

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

OPINION OF BOARD: Claimant was a regularly assigned Track Laborer in Carrier's District Gang No. 1, with assigned hours **7:30** A.M. to 4:00 P.M., Monday through Friday.

On October 13, 1977, he was charged with failure to protect his assignment, with hearing scheduled for 10:00 A.M., October 25, 1977. Due to the **claimant allegedly** not being able to find the location of the hearing scheduled for October 25, 1977, at the request of the General Chairman of the Organization, another hearing was scheduled for 10:00 A.M., November 8, 1977. The hearing was held on November 8 and a copy of the transcript has been **made** a part of the record. Claimant was advised of his dismissal from service on November 17, 1977.

From a careful review of the transcript of the hearing and the submissions of the parties, we find that none of claimant's substantive procedural rights was violated. The record shows that the claimant called the Supervisor on October 4, 1977, and stated that he had automobile trouble. He was advised by the **Supervisor** to get his car fixed. According to the Supervisor, the claimant again called about 10:00 A.M., on October 5 and said that he had overslept and that his car still was not fixed. About 4:00 P.M., October 10 claimant reported to the Supervisor to pick up his check. At the investigation the Supervisor stated in part:

"Well he called in on the 4th and said he had automobile trouble and I told him to get it fixed and come on in and the next morning he called in on the 5th I would say about nine or ten o'clock something like that and said he overslept and his car still wasn't repaired and I told him that he was going to have to get that car fixed or whatever he had to do and get on in to work and so then I didn't hear any more from him then until the 10th of the month and he came out then and got his check about four o'clock and I asked him where he had been and he said he had problems and so I notified him then that he was out of service for failing to protect his job and that he would be notified when the hearing was to be set."

It is evident from the record that claimant **was** expected to work on October 5, 1977, but failed to do so. There is no record that he **worked or** reported to anyone on October 6 and 7, and actually did not report for work on October 10, but reported only for the purpose of picking up his check. The claimant did not have permission to be absent on these dates.

The record also shows that claimant, who entered Carrier's service on August 23, 1974, had previously been suspended on four different occasions for failing to protect his assignment, and suspended on another occasion for being late for work. It is apparent that the prior discipline did not have the desired effect.

Based on the entire record, the Board finds no proper basis for interfering with the discipline imposed by the Carrier.

In reaching our decision the Board has not considered any dates after October 10, 1977, when, as the record shows, the **Supervisor** "notified him then that he was out of service."

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;

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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 14th day of December 1979.