

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22961
Docket Number MU-23101

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Apprentice **Foreman A. H. Brinson** was without **just and sufficient** cause and on the **basis** of unproven and disproven charges **/System File C-4(13)-AHB/12-39 (78-22) J/**.

(2) Apprentice Foreman **A. H. Brinson** shall be afforded the remedy prescribed in Section 3 of Rule 39."

OPINION OF BOARD: The **claimant**, an Apprentice Foreman, had about five years of service **with** the Carrier, and was **assigned to** Section Force 8098 at Dawson, Georgia.

On December 12, 1977, after working about two hours, **claimant** left the job because of alleged illness. He went to a doctor in Dawson, who treated **him** and released him to return to duty. **Claimant** felt that his physical condition needed further attention, and he ret-d to his **home** in Vidalia, Georgia, where he was treated 'by his personal physician. On December 14, 1977, claimant notified his foreman of his absence, advising the **foreman** that he was in a hospital and would return to work when he was well.

Claimant had **made** no further contact with any of his supervisors **and** on January 12, 1978, Carrier's Division Engineer sent him a memorandum attaching a MS 4743 form for his doctor to fill out. No answer was received to the **January** 12, 1978, memorandum. On January 24, 1978, a **tracer memorandum** was sent to him. He did not respond to the memorandum of January 24, and on February 9, 1978 he was charged with failure to carry out instructions and for unauthorized absence, with investigation set for February 16, 1978.

The investigation was conducted as scheduled. A **copy of** the transcript has been made a part of the record. At the conclusion of the investigation claimant was given a Form 4743 and requested **to** have it filled out by his doctor at Vidalia and furnished to the **Roadmaster's** office.

On February 27, 1978, the Division Engineer wrote claimant in part:

'The hearing developed that on December 12, 1977 you left your position as Apprentice Foreman at **Dawson**, Ga. to go to the doctor and returned to your home. It further indicates that about 7:30 PM on December 14, 1977 you called your immediate supervisor, Foreman B. F. Harris at **Dawson**, and advised him you had gone to the doctor in Vidalia, Ga. and he had placed you in the hospital, diagnosing your condition as pneumonia. After not hearing from you at the end of 30 days or on January 12th, Mr. O'Quinn addressed you a letter under my signature, instructing that you have your doctor fill out attached Form MS-4743 and return it to this office promptly. As brought out in the hearing, the purpose of these instructions were to obtain a medical opinion as to your condition and whether or not you were physically able to return to work and, if not, when you would be able to do so. You stated that you did not receive Form 4743 with the letter of January 12th, however, you made no attempt to contact any of your supervisors for another form nor call this office and discuss the situation with Mr. O'Quinn or myself.

'You alleged that you did not receive the letter of January 24, 1978 although it was addressed to the last post office address you had given us, and it was not returned to this office unclaimed. You also later stated that this was your mother's post office box and you and your brother had been using same in the past.

"While it is questionable as to whether or not you complied with Rule 17 b and c, since you did notify your foreman, there is no question when instructed to furnish proof of your condition on January 12th you made no attempt to comply with these positive instructions.

'Your entire personal record file was reviewed following the hearing and you took no exceptions to the items listed on the Form PS-10 which indicated your continued absence from your work assignments with utter disregard for the requirements of Rule 17 b and c of your Working Agreement and further indicates an insubordinate attitude in connection with such failures.

"Just prior to this particular instance you were suspended for 15 days (November 27 through December 11, 1977) for failure to comply with Rule 17 b and c, and following a conversation with your General Chairman, Mr. Bramlett, and you personally, at which time you assured me that you would in the future comply with our working rules, and I reduced your suspension and allowed you to return to work on December 5, 1977.

"For your failure to comply with instructions which constitutes violation of Rule 18 of the Safety **Rules** as charged, you are dismissed from service, effective at close of work day on February 28, 1978."

It was also brought out in the on-property handling that when the Form 4743, given to claimant at the close of the investigation, **was** returned it showed that claimant had been released by his personal physician at Vidalia to return to work **on** December 30, 1977. No explanation was given for his absence after that date.

Rule 18 of Carrier's Safety **Rules** for Engineering and Maintenance of Way **Employees** reads:

"**18.** Disloyalty, dishonesty, desertion, intemperance, **immorality**, vicious or uncivil conduct, insubordination, sleeping **on** duty, incompetency, making false statements, or concealing facts concerning matters under investigation, **will** subject the offender to dismissal."

Paragraphs (b) and **(c)** of Rule 18 reads:

"(b) An employee desiring to be absent from service **must** obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he **must** be able to furnish proof of his inability to notify his foreman or proper officer.

"(c) An employee off duty **account** of sickness or for any other good cause must notify his foreman or the proper officer as early as possible. In case of sickness or injury, they will not be required to secure leave of absence to protect their seniority, but may be required to furnish proof of disability."

Based upon our review of the entire record, including claimant's past record, which shows numerous warnings and one prior suspension for absenteeism, we do not find the discipline imposed by the Carrier to be arbitrary, capricious or in bad faith.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.

