

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23029
Docket Number M-23147

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(St. Louis-San Francisco Railway Company)

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

(1) The dismissal of **Track Department Employee M. A. Young** for alleged violation of Rule 189 was without just and sufficient cause and on the basis of **unproven** charges (System File B-1478).

(2) Claimant **M. A. Young** shall be afforded the remedy **prescribed** in Article 11, Rule 91 **(b) (6).**"

OPINION OF BOARD: Claimant entered Carrier's service May 19, 1972. He was removed from service August 23, 1978, for excessive absenteeism and for failure to secure authority to be absent on August 21 and 22, 1978. Request was made by the Organization for **formal** investigation, which was conducted on September 8, 1978. A copy of the transcript of the investigation has been made a part of the record.

Carrier's Rules 176 and 189 provide:

"Rule 176. Employees who are negligent or indifferent to duty... will not be retained in the **service.**"

"**Rule 189.** Employees must not absent themselves from their duties, exchange duties with nor substitute others in **their** place, without proper authority."

The record shows that during the first eight months of 1978, **claimant** was **absent** 47 working days and a portion of 16 other work days. The record also shows that claimant did not have proper permission to be absent on August 21 and 22, 1978.

During the investigation, **claimant's** representative objected to claimant's prior record being included in the investigation. Although a few awards have held it to be improper to include an **employee's** past record in the transcript of the investigation, others have held to the contrary, where

the past record was not used to determine guilt, but for the purpose of determining the discipline to be imposed for a proven offense. This Referee agrees with the latter group of Awards. See Awards 22460, 22521. The record shows **that claimant had, on numerous prior occasions, been warned** concerning his excessive absenteeism, but apparently to **no** avail.

Based on the entire record, there is no proper basis for this Board to interfere **with the action** of the Carrier in imposing the discipline that **it did**.

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. Paulson
Executive Secretary

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