

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23079
Docket Number MW-23133

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance** of Way **Employees**
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Clyde L. Davis **for** alleged insubordination was unwarranted and without just or sufficient cause (**System File C#92/D-2218**).

(2) Clyde L. Davis be reinstated **with seniority**, vacation and all other rights unimpaired **and** be compensated for all wage loss suffered.

(3) Clyde L. Davis be allowed medical **expenses** incurred because of **the** personal injury he suffered on **May** 3, 1978."

OPINION OF BOARD: The **Claimant herein, a section laborer, allegedly hurt** his hand in the **performance** of his duties on May 3, 1978. The Carrier advises that Claimant's foreman told him that if he wanted to go to a doctor, he should fill out a No. 171 Personal **Injury** Report. The Claimant did not fill out the Personal **Injury** Report, but left his assignment at that time without advising his **supervisor and** did not return. On May 18, 1978 a letter was sent to **Claimant** by Carrier's **Roadmaster:**

"**This** go advise that **you** have been dismissed from the services of the Chicago, Milwaukee, St. Paul & Pacific **Railroad** for **being** absent from work without proper **authority** per **Rule M-702** of the Operating **Rules for Employees in the Maintenance of Way and Structures.**

You will arrange to **turn** into **Mr. V. E. Robinson**, Section Foremen, all railroad property presently in **your** possession."

Rule 18(b) of the applicable collective **bargaining Agreement** provides:

"An **employee** who has been disciplined or dismissed, or who **considers** himself unjustly treated, shall be given a fair **and** impartial hearing before the officer **designated** by the Railroad Company to handle such matters, provided that request for hearing **is made** in writing to the Superintendent within ten (10) days from the date of advice of discipline or complaint. The hearing shall be **held** within ten (10) days from date of request for hearing **and** decision shall be rendered within ten (10) days from date the hearing is completed."

No request was **made** by the **Claimant** for a hearing within the **time** specified in the above rule.

As this is a discipline case, and was not handled in accordance with **Rule 18(b)** of the applicable Agreement, the Board **has** no **alternative** but to **dismiss the claim**.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauloz
Executive Secretary

Dated at Chicago, Illinois, this 15th day of **December 1980**.