

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **23360**
Docket Number m-23226

Josef P. **Sirefman**, Referee

PARTIES TO DISPUTE,: ((Brotherhood of Maintenance of Way Employees
(Missouri Pacific **Railroad** Company

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

(1) The discipline assessed **Trackman** P, J. Berry for allegedly 'absenting yourself from your position as **Trackman** on System Bail Gang 6020 without permission' was without just **and** sufficient cause and wholly disproportionate to the offense with which charged (System File S 310-258).

(2) **Trackman** P. J. Barry shall be afforded the remedy prescribed in Rule **12**, Section 1 (e)."

OPINION OF BOARD: The Claimant, Paul J. Berry, was employed as a **Trackman** by the Missouri Pacific Railroad Company for about three years when given notice on August 10, 1978 of an investigation "in connection with your failure to follow (Foreman's) **instructions...** on August 3, 1978 and August 9, 1978 by absenting yourself from your position as **Trackman** on System Bail Gang 6020 without permission". An investigation was held on September 11, 1978 and Claimant was informed of his dismissal by the Carrier on September **12**, 1978.

There was no evidence given by the Foreman at the investigation concerning the events of August 3, 1978, **and** these played no further role in the disciplinary process. An examination of the record at the hearing establishes that **Claimant** left his job on August 9, 1978 contrary to the instructions of supervision for notification. There was substantial evidence to sustain the Carrier's decision to discipline **Claimant**. Mr. Berry was twice offered reinstatement by the Carrier - on July 9 and again on July 24, 1979 - but he did not report to work. In view of his failure to avail himself of these two opportunities his termination is upheld.

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:



Executive Secretary

Dated at Chicago, Illinois, this **14th** day of August **1981**.

