

NATIONAL RAILROAD ADJUSTMENT BOARD

TRIED DIVISION

Award Number 23826  
Docket Number MW-23941

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Denver and Rio Grande Western Railroad Company

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

(1) **The dismissal** of Section laborer T. E. Ruble for alleged 'habitual absenteeism from duty and allegedly absenting himself **from** duty without proper authority on January 11 and January 14, 1980' was without just and sufficient cause and on the basis of unproven charges (System File D-5-80/MW-16-80).

(2) **Section** Laborer T. E. Ruble shall be reinstated with seniority and all other rights unimpaired and he shall be **compensated** for all wage loss suffered, including overtime and holiday pay."

OPINION OF BOARD: The **Claimant** was **employed by** Carrier as a track laborer, with a seniority date of May 19, 1977. On January 14, 1980, he was notified:

"**Formal investigation** will be held at 9:00 a.m., Monday, January 21, 1980, in room 22, Pueblo Union Depot, Pueblo, Colorado to develop facts and place responsibility, if any, in connection with **Section** laborer T. E. Ruble's habitual absenteeism **from** duty and allegedly absenting himself **from** duty without proper authority on January 11 and January 14, 1980 as **Section** Laborer on Pueblo Section.

Your **presence** as principal is required at this investigation, together **with** a representative if desired.

If you desire any **witnesses** to appear in your behalf, notify the undersigned promptly."

The investigation was postponed and held on January 20, 1980, following which **Claimant** was dismissed **from service on February 6, 1980**. A copy of the transcript of the investigation has been made a part of the record.

The transcript shows that the hearing officer attempted to go into Claimant's absentee record from the date he was employed without giving specific dates in the letter of charge. This resulted in a strong protest from Claimant's representative. We **consider** the Carrier to be in error and possibly in violation of Rule 28 of the Agreement **on** the habitual absenteeism charge, and attempting to go back six **months** or so **in** the investigation. At any rate, **Claimant's** attendance record was improving after being reprimanded twice.

So far as the two specific dates mentioned are concerned, January '11 and 14, 1980; as we understand from the record, Claimant worked his **regular assignment** on January 11. He was later called to work on another Foreman's shift, to which he responded. Later in the evening he advised the Foreman he felt ill and would like to go home. His request was not granted and Claimant continued working. Subsequently, the Foreman under whom the Claimant was working, was called home on an emergency and did not return. The gang was left in charge of a Mr. Nick Baca, who was not called into the investigation. Claimant contended that he was too ill to work and went home, apparently without permission from anyone.

On January 14, 1980, Claimant was on duty when a message was conveyed to him from the tower that he was to go home immediately because of an emergency. His Foreman suggested that he call home first to find out what the emergency was. Claimant went to use the telephone, but it was busy, so he went home at about 2:00 p.m. It was later developed that the gas had been turned off at Claimant's home;

Based on the entire record, discipline was warranted. However, permanent dismissal was excessive. We will award that Claimant be restored to the service with seniority unimpaired, but without any compensation for time lost while 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;

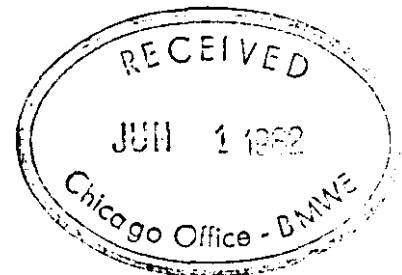
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.