

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24159
Docket Number MW-23886

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ St. Louis-San Francisco Railway Company
{ (Now Burlington Northern Inc.)

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

(1) The dismissal of Trackman L. D. McCafferty for alleged violation of Rule 189 was without just and sufficient cause and wholly disproportionate to such a charge (System File B-1003).

(2) Trackman L. D. McCafferty shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: This is a discipline case involving violation of Rule 189 of Carrier's Rules for its Maintenance of Way and Structures Employees. This rule reads:

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

The record shows that Claimant had been disqualified as a Track Foreman effective the close of work on August 3, 1979. Thereafter, in the voluntary exercise of seniority he displaced onto a job as a Trackman at Snyder, Oklahoma, reporting for work on Snyder Gang 552 on August 29, 1979. This gang is composed of a Foreman and three Trackmen, one of which was Claimant. On August 30 and 31, 1979 Claimant absented himself from duty without proper authority. When he returned to work he was counseled by his Foreman about such unauthorized absence. The Claimant reportedly told the Foreman that he was absent because he was building a new home and that he was going to lay off when he wanted to and it did not make any difference what the Foreman said, and, according to the Form, said, "if they fire me they will just fire me." The Foreman further states that he told Claimant that if he continued to lay off without proper authority he would have to suffer the consequences for such action. He also states he told Claimant that although he would not grant him permission to be absent from work to work on his home, that Claimant was free to take the matter to his superiors if he so chose.

The Claimant was again absent without proper authority on September 25, 26, 27 and 28, 1979, and following these absences he was removed from service.

At a formal hearing accorded Claimant relative to these latter absences, Claimant did not dispute the fact he had been counselled about his absences, stating that he had to take orr whether he had permission or not; he was forced into a financial bind, and "couldn't get Division Engineer Planchon to see my problems or the roadmaster either one."

In additional testimony Claimant stated that he "had concrete to run, it was threatening rain;" that he needed to pour concrete for the foundation or his new home at that time because rain would have prevented a cement truck from getting out to his home for another six weeks. Further, that he and his wife "were Worried about loosing (sic) the equity that we got out of our other home without getting another home. e.ve were afraid we would loose (sic) our money before we got the home built."

We are not persuaded that Claimant had good and sufficient cause to be absent from work, particularly in the light of the counselling he had received relative to his stated intentions. Under the circumstances, and in view of Claimant's past disciplinary record indicating that during his eight and one-half years' service he had twice been dismissed and reinstated on a leniency basis (once for falsely claiming travel expenses and once for insubordination in refusing to work overtime), as well as 25 demerits for failure to report the personal injury of a track man working in his gang, we find no basis to disturb the discipline imposed. The Carrier should not be burdened with the need to keep in its employ an employee who, as Carrier's Assistant Chief Engineer stated in his denial of Claimant's appeal for reinstatement, "seems to feel that his only responsibility is to himself and that he can do as he pleases, regardless of instructions, counselling and disciplinary action."

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 Employee involved in this dispute are respectively Carrier and Employee 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

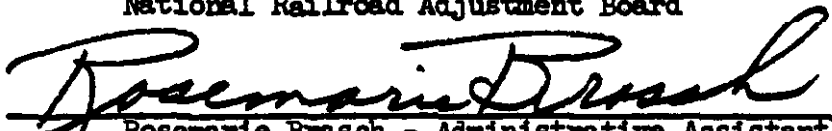
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of February 1983.