

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24252  
Docket Number MW-24284

Robert W. McAllister, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(Consolidated Rail Corporation (former **Penn Central**  
( **Transportation Company**)

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

(1) The dismissal of James Leak, Jr. for 'Unauthorized absenteeism on the following dates: **November 28, 29, 30, 1979**' was excessive and without just and sufficient cause (System Docket No. 534).

(2) **James** Leak, Jr. shall be reinstated with seniority vacation and all other rights **unimpaired** and he shall be **compensated** in **compliance** with **Agreement Rule 6-A-1(d).**"

**OPINION OF BOARD:** James Leak, Jr., the Claimant, was dismissed frw service for **unauthorized** absenteeism. The **Claimant** was employed as a truck driver with seniority since January 22, **1976**.

The absences which caused Claimant to be so charged occurred on November 28, **29, and 30, 1979**. The Organization asserts the transcript supports a finding Claimant notified the Carrier of his reasons prior to the absences. The Organization argues in the alternative that, assuming **arguendo** the Claimant was absent from duty **without** proper authority, the supreme penalty of discharge is excessive and not **commensurate** with the offense.

**This Board**, after **reviewing** the transcript, concludes the Claimant did not receive permission to be absent on the three days **involved**. Despite claims of discrimination and harassment, we agree with the Carrier's conclusion and find absolutely no evidence of such arbitrary conduct other than **Claimant's** assertions **made** at the trial. By Claimant's own admission, he acknowledged his absences, but provided no evidence of having secured authorization for the absences.

**Having** so found, this **Board** now addresses the Organization **position** concerning the **degree of** discipline. We find the Carrier's consideration of Claimant's lengthy past record **in** determining the extent of **discipline** to be proper and necessary. **The** evidence adduced sustains the Carrier's findings and justifies the imposition of discipline. **The** consideration of prior corrective action is, as stated above, an essential step in the use of progressive discipline. **Considering**, the Carrier's expectation that **employees** work on a regular basis, the Board finds the **Carrier** did not act in an unreasonable **manner**.

**FINDINGS:** The Third Division of the **Adjustment** Board, after giving the parties to this dispute due notice of hearing **thereon**, and **upon** the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

