

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24256
Docket Number MW-24346

Robert W. McAllister, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Houston Belt & Terminal Railway Company

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

(1) The dismissal of **Trackman J. L. Nickerson** for leaving his 'job without proper authority' at 'about **3:00 P.M., Monday, August 11, 1980**' was without just and sufficient cause, **unwarranted** • ud au abuse of justice and discretion by the Carrier.

(2) The **claimant** 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: The Claimant, J. L. Nickerson, was initially employed by Carrier as a track laborer on February 23, 1979. He was discharged, effective September 18, 1980, for leaving his job without authorization and for failing to work overtime. The Organization contends the discharge was without just and sufficient cause, was **unwarranted**, and an abuse of justice and managerial discretion.

The record indicates that on August 11, 1980, Claimant was one of three men working under a section foreman. At about 2:30 P.M., the Roadmaster told the section foreman not to let anyone go because stripped joints and a broken rail had been found and had to be corrected. It is undisputed Claimant worked until approximately 3:30 P.M. and left without permission and without working, as instructed.

On the basis of this evidence, it is clear the Claimant was guilty of an offense requiring disciplinary action. The Board, however, notes Claimant's wife was hospitalized for cancer treatment and Claimant's child was entrusted to a baby sitter who required the baby to be picked up in time to enable her to go to work. This Board does not condone disobedience, but, herein, Claimant's conduct should have been weighed in a manner whereby his responsibilities to his job were considered along with his obvious dilemma triggered by his wife's hospitalization. Some form of serious discipline was in order, but not permanent loss of his job. Claimant's absence from work will, therefore, be considered a suspension, and he will be reinstated with his seniority rights intact, but without back pay.

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 23rd day of March 1983.**

