

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24370**
Docket Number **MW-24429**

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Detroit, Toledo and **Ironton** Railroad Company

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

(1) **The** discipline of **Trackman S.** Landers, Jr. for failing 'to protect and report for work on December 3, **4, 5, 6, 7, 10, 11, 12, 13** and 14, **1979**' **was** without just and sufficient cause.

(2) The claimant's record shall be cleared and he shall be **compensated** for all wage loss suffered."

OPINION OF BOARD: **Claimant**, who had been **under** medical care for a work related **injury** to his hand, was released from medical care by his physician **and** permitted to **commence** work on December **3, 1979**. Claimant failed to report for work on that date. However, **information** developed at the later formal investigation indicated **that** Claimant did phone the Carrier on November **30, 1979** and was informed by **unknown personnel** that he had been "laid off".

On **January 14, 1980**, the Carrier sent the **Claimant** a letter stating that because Claimant had not reported to work, the Carrier was "assuming" that Claimant had "found employment elsewhere". **However**, this letter also gave the Claimant ten (10) days (until January **24, 1980**) in which to **report** to the Carrier to contradict the "**assumption**" of the Carrier. This letter was returned to the Carrier indicating that the Claimant had left with **no** forwarding **address**. The **Organization** subsequently provided the **Carrier** with the **Claimant's** new address. (**The Claimant had moved** during this period.)

An **investigation** was held on **May 23, 1980**, in an effort by the Carrier to develop the **facts** relating to Claimant's failure to report to duty for the period **December 3, 1979** through **December 14, 1979**. (Claimant would have been subject to reduction in force rules.) As indicated before, **information** developed at the hearing indicated **that** the **Claimant** had phoned the Carrier, **although** the **Claimant** did not recall the **name** of the individual he had spoken to on **November 30, WY**.

On **May 28, 1980**, the Carrier notified the Claimant that the evidence adduced at **the** hearing supported **their** original "assumption" that the Claimant had "quit the railroad", and that the record would "stand as unrefuted".

In a letter dated January 6, 1981, the Carrier reiterated their position in this dispute. Further, the Carrier offered to restore the **Claimant** to service with full seniority rights unimpaired, but without **compensation** for any **time** the **Claimant** was off. Claimant, for reasons best known to **him**, rejected Carrier's officer.

Based upon our review of the **complete** record in this case, it is our determination that Claimant be again offered one last **opportunity** to return to service with seniority unimpaired but without **compensation** for **time** lost subject to the **same terms** and conditions which were **outlined in** Carrier's January 6, 1981 letter. If **Claimant fails** to avail himself of this **opportunity**, the claim as outlined herein is denied.

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 disposed of 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 13th day of May 1983.

