

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24634
Docket Number **MW-24760**

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

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

(1) The dismissal of Machine Operator M. T. **McAlister** for "allegedly being absent without proper authority on January 21 and February 2 through 13, 1981" was without just and sufficient cause and in violation of the Agreement (Carrier's File **\$ 310-407**).

(2) Machine Operator **M. T. McAlister** shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was furloughed as a machine operator on Carrier's Old Eastern Division Seniority District in December, 1980, **and, while furloughed,** went to work on Carrier's New Orleans Division in December, 1980.

The Carrier states that Claimant worked on the New Orleans Division during December, 1980, and January, 1981; that he was absent without authority on that Division on January 21, 1981, and was continually absent without authority after February 1, 1981, as result of which he was notified to report for formal investigation to be held on February 20, 1981: X

"... to develop the facts and place responsibility, if any, for your reported **being** absent without proper authority while you were an operator on Gang 8923 on January 21, 1981, and February 2 through February 13, 1981."

At the request of Claimant's representative, the investigation was rescheduled for April 14, 1981. The Claimant did not attend the investigation on that date, although representative of the Organization was present. On April 17, 1981, Claimant was notified of his dismissal from service.

The record before the Board is conflicting in many respects, and apparently new issues and defenses are raised before the Board that were **not** raised in the on-property handling. For instance, the Organization contends that after working about two months on the New Orleans Division, Claimant decided to return to the Old Eastern Division as a "cut-off" employee, and that he verbally requested permission from the Carrier to do so; that Claimant held no seniority on the New Orleans Division, and that he was verbally informed by an **officer** Of the Carrier that he did not "need a cut-off letter" from the New Orleans Division as a prerequisite to returning to the Old Eastern Division. The Carrier **emphatically** denies that the Claimant contacted any Carrier officer about leaving the New Orleans Division. The Carrier also responds that an employee who is furloughed on one district and hires out on another district, establishes seniority on the second; that Claimant had established seniority on the New Orleans Division, and simply walked off the job without notifying anyone in **charge** that he was doing so. Without more evidence than is in the record, the Board is unable to resolve these differences which, it would seem, should have been put in issue in the **on-property** handling.

In its submission to the Board, the Organization introduces a letter from the Claimant to the General Chairman, which the Carrier contends was never submitted on the property. The Organization also contends before the Board that the reason Claimant did not attend the investigation held on April 14, 1981, was because he had been recalled to and was working at Washington, Missouri, and **"was** unable to travel to **Addis**, Louisiana, and return (a distance of more than 1400 miles) because of economic reasons." It appears, however, that this issue was not raised in the on-property handling. The Carrier goes on to state that if such an issue had been raised prior to or during the hearing of Claimant's inability to travel to **Addis**, Louisiana, some other arrangements could possibly have been made.

X-✓ In disputes involving discipline this Board has consistently and repeatedly held that the parties to such dispute and the Board itself are each and all restricted to the testimony introduced at the disciplinary hearing or investigation. The record may not properly be added to after the investigation or hearing closes. At the investigation conducted on April 14, 1981, at which Claimant's representative was present, **uncontroverted** evidence was presented that Claimant did not have permission from any officer to be absent from his work on the dates involved in the letter of charge. We find that **severe** discipline was warranted; however, permanent dismissal was excessive. We will award that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the 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 Carriers and the **Employees** 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

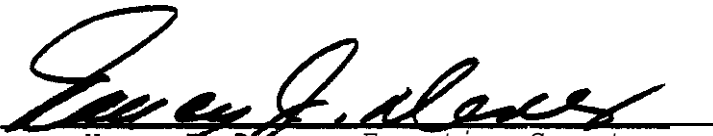
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST ::


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984