

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24734
Docket Number MW-24530

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Galveston, Houston and Henderson Railroad Company

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

(1) The dismissal of Track Laborer L. G. Stovall for 'being absent without leave and without proper authority, on February 17th, 1981' was excessive, wholly disproportionate to the offense with which charged and an abuse of justice and discretion by the Carrier.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wages loss suffered (System File G-115/29-MofW)."

OPINION OF BOARD: Claimant L. G. **Stovall**, a track laborer has been with the Carrier since April 1, 1965. On February 17, 1981, he was absent from work. On February 19, Claimant was dismissed from the service for being absent without proper authority on February 17, 1981. Claimant requested a hearing, which was held on March 5, 1981, and, as a result, he was informed the Carrier reaffirmed his dismissal.

The record establishes Claimant acknowledged at the hearing he was absent on February 17, 1981, and did not have permission to be absent. The Carrier, in reaching its decision to terminate the Claimant, took into consideration Claimant's prior record. It shows a suspension in 1969 for failure to report for work. In early November, 1979, Claimant was warned of his failure to report to work on several occasions and his failure, when sick, to notify his supervisor before his scheduled starting time. On November 16, 1979, he was issued a seven day suspension for his failure to notify his supervisor of his absence on November 15 prior to his scheduled starting time. There being no question about the correctness of the Carrier's charge with respect to the Claimant's absence on February 17, 1981, this Board has confined its review to the issue raised concerning the degree of penalty. Considering Claimant's long service and his prior record as outlined above, we believe the penalty of discharge is not proportionate to the violation proved. We do not view Claimant's record as establishing he was indifferent to and unwilling to maintain a reasonable attendance record, and we will, therefore, convert the period he has been out of service into a suspension without pay. Claimant should understand that he will be expected to report to work with reasonable regularity. In the event of a legitimate absence, Claimant must also understand it is his obligation and duty to timely notify management of his impending absence. Failure to be regular in attendance will obviously not be tolerated by the Carrier.

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

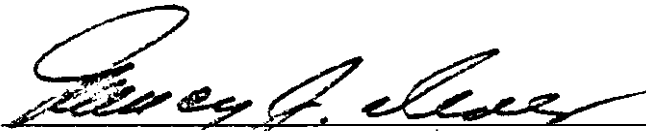
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.

