NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24764

THIRD DIVISION Docket Number MW-25215

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Elgin, Joliet and Eastern Railway Company

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

(1) The dismissal of Welding Foreman R. Ruvalcaba for alleged 'theft of one (1) oxygen and two (2) acetylene tanks on or about December 15, 1981' was on the basis of unproven charges and in violation of the Agreement (System File 142-293/Case VM-29-82/SAC-7-82).

(2) The claimant shall be reinstated with seniority unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to the occurrence giving rise to the claim herein, claimant was employed by the Carrier as a welding foreman. On January 28, 1982, he was notified, certified mail - return receipt requested:

> "Please report for a formal hearing to be held Wednesday, February 3, 1982 at 9:30 A.M. in the Conference Room, Annex Building, Kirk Yard, Gary, Indiana.
>
> This hearing is being convened to determine your responsibility and involvement, if any, in connection with the theft of one (1) oxygen and two (2) acetylene tank (sic) on or about December 15, 1981.
>
> You may bring witnesses and/or be represented at this hearing as provided by our Agreement."

The hearing was postponed and finally held on April 22, 1982. The claimant did not appear at the April 22, 1982, hearing, but was represented by the Local Chairman of the Organization. Following the hearing, claimant was notified on April 30, 1982, of his dismissal from Carrier's service. A copy of the transcript of the hearing conducted on April 22, 1982, had been made a part of the record.

We have carefully reviewed the transcript of the hearing and find substantial evidence in support of the charge against the claimant. We have noted the objections raised by the claimant's representative during the course of the investigation, or hearing, and find none of them of sufficient significance to invalidate the proceedings. This Division has issued numerous awards upholding the admissibility of written statements in disciplinary proceedings without the writer being present. There was no credible evidence that at the time of the hearing claimant was disabled to such an extent as to prevent his attendance. We have previously upheld the conducting of a disciplinary hearing in absentia. See recent Awards Nos. 24550 and 24546.

Based upon the record, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier. Claimant's length of service, about twenty-five years, is emphasized by the Petitioner. However, we do not consider length of service as a valid defense in a case such as the one here involved.

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 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984.