

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24915  
Docket Number MS-25183

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Mack A. Mooney  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"(A) Carrier violated agreement between Brotherhood of Railway, Airline and Steamship Clerks and the Consolidated Rail Corporation, when it dismissed me from its employment on November 23, 1981.

(B) I would like to be reinstated with all rights unimpaired as a result of the dismissal."

OPINION OF BOARD: The record shows that the Claimant (Petitioner), who entered Carrier's service on January 25, 1968, was notified on November 10, 1981, to attend an investigation on November 19, 1981, on the charge:

- "1. Absent form (sic) assigned work location at Middletown Yard, Middletown, Ohio, 11:12 PM 10/12/81 to 1:20 AM 10/13/81 during your tour of duty 10/12/81 11:00 PM - 7:00 AM Job FM5F.
2. Falsifying timeslip by showing eight (8) hours worked Middletown, Ohio Job FM5F 11:00 PM 10/12/81 to 7:00 AM 10/13/81."

The investigation was conducted as scheduled. A copy of the transcript has been made a part of the record. Claimant was present throughout the investigation and was represented. Upon review of the transcript, we find that the investigation was conducted in a fair and impartial manner and that none of Claimant's substantive procedural rights was violated.

There was substantial evidence presented in the investigation to support the charge against Claimant. The offense was of such nature that severe discipline was warranted. Claimant's actions, coupled with his prior disciplinary record, fully warranted the discipline imposed by the Carrier. The record shows that about two months prior to the offense herein, or on August 18, 1981, Claimant was restored to service by the Carrier on a leniency basis following dismissal on June 8, 1981. The letter of understanding in connection with the prior leniency reinstatement, written by Carrier's Manager-Labor Relations and concurred in by the Vice General Chairman of Claimant's Organization, contained the following:

"During my discussion of this matter with you and Mr. Mooney yesterday, I pointed out to Mr. Mooney that his discipline record in connection with the March and May, 1981 incidents was such that if he becomes involved in another serious rules or conduct incident, he should expect severe discipline."

Apparently the prior handling and warning did not have the desired result.

Based on the record herein the claim will be 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 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

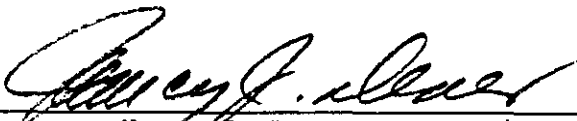
That the Agreement was not violated.

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 30th day of July 1984.