

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25189
Docket Number W-25206

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 Trackman-Driver J. R. Candles for "leaving **your** assignment as **Trackman** Driver on Gang 5666, **Denton**, Texas, without proper authority, 12:00 Noon, Friday April 16, **1982**" and for alleged "failure to comply with Item 5" was without just and sufficient cause (**Carrier's** File S 310-463).

(2) The claimant shall be reinstated with seniority and all **other** rights unimpaired and he shall be compensated for all wage **loss** suffered including holiday and overtime pay.

OPINION OF BOARD: The record shows that Claimant entered the Carrier's service as a **Trackman** in October, 1973. At the time of the occurrence giving rise to the dispute herein, Claimant was a Trackman-Driver, Gang **NO. 5666**, at **Denton**, Texas, with assigned hours 7:00 A.M. to 3:00 P.M.

On April 22, 1982, Claimant was notified to report for a formal investigation, to be held **on** April 26, 1982:

"...to **develop** the facts and place responsibility, if **any**, in connection with your allegedly leaving your assignment **without** proper authority at approximately 12:00 noon, Friday, April 16, 1982, and a review of your personal record.:

The investigation was conducted as scheduled, with Claimant present and represented. A copy of the transcript of the investigation has been made a part of the record. From our review, we find that the investigation was conducted in a fair and impartial manner. **None** of Claimant's substantive procedural rights was violated. On **May 3**, 1982, Claimant was notified of his dismissal from service:

"**You** are hereby advised that your record has this date been assessed with Dismissal in connection with your leaving your **assignment as Trackman** Driver on Gang 5666, **Denton**, Texas, without proper authority, 12:00 Noon, Friday, April 16, 1982, and your failure to comply with Item 5 of the Conditions of Employment, Application for Employment, Form 15021, as-result of formal investigation held **Denton**, Texas, April 26, 1982."

Evidence developed in the investigation established that **Claimant** left his assignment three hours early on April 16, 1982, without authority from any supervisory personnel. The gang was working without a **Foreman** on the day involved, the Foreman attending a rules class at Sherman, Texas. However, prior to leaving for the rules class, the Foreman instructed the gang as to work to be performed on that day. The record also indicates that Claimant did not report his absence to the Foreman when the Foreman returned to work the following Monday.

The Claimant contended in the investigation that the reason for his leaving work about 12:00 Noon on Friday, April 16, 1982, was because the principal of the school that his son attended wanted to talk to him about his son; that he had such information when he reported for work on April 16, but said nothing to his Foreman or the Roadmaster about leaving work early.

There was substantial evidence adduced at the investigation to support the charge of Claimant leaving his assignment without proper authority at approximately 12:00 Noon, Friday, April 16, 1982. Also, Claimant's prior discipline record was far from satisfactory. He had previously been dismissed for absenting himself from work without authority and reinstated on a leniency basis about four months prior to the occurrence involved herein; had previously been assessed 20 days deferred suspension for failure to protect his assignment on three specific dates. In the investigation it was also developed that on April 14, 1982, the Roadmaster, in talking with the Claimant, instructed him that he must have authority with permission to be absent, and that such authority could be granted by the Foreman or the Roadmaster. An employee's prior record may always be considered in arriving at the discipline to be imposed for a proven offense.

Considering Claimant's actions on April 16, 1982, and his prior discipline record, the action of the Carrier in dismissing him from the service was not arbitrary, capricious or in bad faith. The claim will be denied.

In its Submissions to this Board the Organization has raised procedural contentions that the record shows were not handled on the property. Such contentions may not properly be raised for the first time before this Board.

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

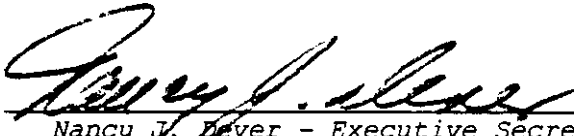
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois+ this 11th day of January 1985.