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NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25223
Docket Number MW-25329

James Robert Cox, Referee

(Brotherhood of Maintenance of Way **Employes**)

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company)

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

(1) The dismissal of **Trackman** T. K. Frank for allegedly being absent from his assignment without proper authority from August 28, 1981 until October 28, 1981 was without just and sufficient cause (Carrier's File S 247-6369).

(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: Claimant Frank, a **Trackman**, was assigned to a Section Gang headquartered at Maringouin, Louisiana, when, on January 18, 1981, he broke his leg in an automobile accident while on vacation. Following hospitalization, Frank remained under medical care in Houston, Texas from January through much of August, 1981. No discipline was imposed for the January-August period of absence.

Claimant reported to a Carrier Roadmaster in late August stating that he was ready to return to work. Although advised to obtain a Doctor's release, Frank did not respond until September 22nd. He was then told to make an appointment for a physical examination with a Carrier **Doctor**. Before he could keep a scheduled examination he became involved in another automobile accident and returned to Houston to be fitted for glasses. When he finally did call a Carrier examining Doctor, he was told that arrangements had to be made through the Assistant Superintendent. Frank again failed to appear for an examination. At this point, the Carrier notified him to report for a Hearing, asserting that he had been absent without proper authority from August 28, 1981 until October 28, 1981.

Claimant Frank was dismissed from the service of the Carrier for violation of that Carrier's **Code** of Safety Rules, General Notice, Paragraphs 4 and 5, General Rules B and **N(2)** and Item 5 of Conditions of **Employment**, Form 15021. These Rules, the Notice and Conditions of Employment, relate to obedience of the Carrier's Rules, faithful and non-negligent discharge of duties, maintaining integrity of character and performing duties to the best of ability as well as,

"Except in case of physical disability **or** extreme emergency, employees will not absent themselves from duty without authority from their immediate supervisor. Employees absent on account of physical disability may be required to furnish a certificate of such physical disability from a reputable doctor...".

The evidence does show that Claimant did not promptly respond to the August request for a work release and thereafter did not properly respond to the Carrier's request for an examination by the Carrier's Doctor. It was November 3, 1981 before he informed the Carrier that his September 22nd **Doctor** visit had been prevented by an automobile accident. Frank's delay in contacting the Carrier's Doctor for **an** appointment after September **22nd** is also unexplained.

It is apparent from the record that although the Carrier was aware of the reason for Claimant's absence after January, 1981, it had failed to put him on **furlough**. Had Frank properly been put on furlough, his leave would have continued into the August **28th-October** 28th period. In any event, there is insufficient evidence that Claimant was absent without authorization during this two-month period. To the contrary, the Carrier requested that he see its Doctor before he could return to work.

Claimant's conduct **was** culpable in that he failed without valid reason to properly comply with the Carrier's prescribed return to work procedure by delaying and/or failing to appear for scheduled medical examinations. Some of this delay may be attributed to the September 22nd accident.

Under the circumstances, Claimant is to be reinstated without **backpay** but with restoration of seniority. His conduct justifies severe discipline.

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.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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P. Dever - Executive Secretary

Dated at Chicago, Illinois, #is 31st day of January 1985.