

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25414
Docket Number MW-25380

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

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

(1) The dismissal of **Trackman J. T. Garris, Jr.** for alleged absence without permission on March 19, 26, 29, 30, 31 and April 1 and 2, 1982 was without just and sufficient cause (System File **C-D-1379/MG-3580**).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant had been in Carrier's service about two years. **There** is in effect a Memorandum of Agreement between the Organization and the Carrier, dated July 25, 1977, which agreement dispenses with the usual form of disciplinary handling in cases of absenteeism and establishes a progressive system for handling such cases, beginning with a warning letter, a five-day overhead suspension, a ten-day actual suspension, and finally dismissal. The Memorandum of Agreement is set forth in full in the record. We are concerned with Sections 5, 6 and 7, of the Agreement, that provide:

"Section 5. An employee who is absent from duty without permission from proper authority and who has been given the warning letter prescribed in Section 2 hereof, who has been assessed five (5) days overhead suspension by a second letter as provided in Section 3 hereof, and who has been assessed ten (10) days' actual suspension by a third letter as provided in Section 4 hereof will be given a final letter in the form attached as Appendix D to this Agreement and will be dismissed from the services of the Railway Company.

Section 6. An employee who has been disciplined under this Agreement who feels he has been unjustly treated may progress a claim or grievance on this account through the regular claimant grievances handling procedure provided he does so within the time limits prescribed in the schedule Agreement for handling claims and grievances.

Section 7. The discipline rules, Rule 21 of the Southern Region Agreement, Rule 24 of the Northern Region Agreement and Rule 18 of Addendum 3 to Northern Region Agreement will not apply to employees disciplined under this Memorandum of **Agreement.**"

On April 19, 1982, Claimant was sent an Appendix D letter:

"You have been absent without permission from proper authority on the following dates:

"March-19, 26, 29, 30, 31 and April 1 and 2, 1982

Rules and instructions governing **Maintenance** of Way employees require that no employee absent himself from duty, nor engage **a** substitute to perform his duties without permission from the proper authority. **Employees** must report for duty at the designated time and place.

As you have **prviously** been given a warning letter on June 30, 1980, were assessed five **(5)** days overhead suspension on October 9, 1981, and **were** assessed ten **(10)** days' actual suspension on October 30, 1981, account your unauthorized absences, you **dre** now being dismissed from the services of the Railway Company effective the close of business April 20, 1982, pursuant to Section 5 of Memorandum of Agreement dated July 25, **1977."**

The Organization filed an appeal on behalf of **Claimant** and requested a grievance hearing. The grievance hearing **was** conducted on June 3, 1982, and **a** transcript has been made **a** part of the **record**. Following the hearing, Claimant's dismissal was affirmed. The Claimant contended **that** he was sick on the days mentioned in the letter of April 19, 1982. There is nothing to indicate that he **was** disabled to the extent that he could not obtain permission from proper authority to be absent on the dates involved. We find that the case was handled in accordance with Section 5 of the Memorandum of Agreement of July 25, 1977. The record also shows that during Claimant's short service with the Carrier, his absentee record was far from satisfactory. We will deny the claim on its merits.

In the handling of the dispute on the property and in the submissions to this Board, each party has commented at length on alleged procedural defects. We do not consider that either party has been prejudiced by the manner in which the dispute was handled, and our decision on the merits has been reached without passing on such issues. We suggest to the parties, **however**, that they agree on just how appeals **are** to be handled in such cases. So far as the Board is concerned, the positions of the parties as to proper appeal procedure in such cases are irreconcilable. Sections 6 and 7 of the Memorandum of Agreement of July 25, 1977, appear to be in contradiction. Section 6 recognizes the right to appeal **"through** the regular claimant grievance handling procedure*. Section 7 **excepts** the application of Rule 21. Rule 21 is captioned *Discipline and Grievances-. The **Board** is in no position to say what sections of Rule 21 are applicable in such cases. See also Award No. 25410 involving the **same** parties.

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

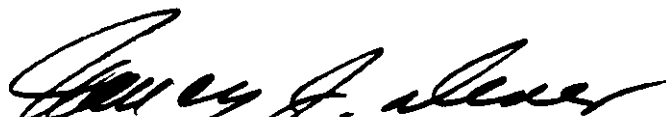
That the Agreement **was** not violated.

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** 30th day of April 1985.