

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25622
Docket Number MW-25448

Nicholas Duda, Jr., Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The dismissal of Foreman A. L. **Kendrick** for allegedly "**absenting** yourself from your assignment without proper permission September 7, 9 and 10, 1982, and falsification of time **sheets** for the period September 4 **through** 10, 1982" was without just cause and an abuse of justice and discretion by the Carrier (System File **C-D-1572/MG-3676**).

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

OPINION OF BOARD: Prior to his dismissal, Claimant was a Production **Gang** Foreman assigned to Force 1270 at **Man**, West Virginia.

The hearing reflects that Claimant was afforded a fair and impartial hearing.

On September 7, 1982, Claimant left his assignment at 10:00 a.m. and did not return that day. Two days later, on September 9, he went out to the work location with his force, but then left at 12 noon. The next day, September 10, he telephoned his Supervisor and advised him that he would be about an hour late reporting for duty; however, he did not report to the work site until approximately **10:30** a.m. Also on September 10, he submitted time sheets for the week of September 4 through September 10, which showed that he had worked a full eight hours on September 7, 9 and 10.

The clear and comprehensive evidence presented at the investigation, including Claimant's admission, conclusively established that he was **guilty** of the specific charges placed against him. However, the record also shows that he **attempted**, although belatedly, to correct the improper time entries. Furthermore, **although** the record supports that Claimant exercised very poor judgment, it does not clearly establish that he intended to defraud.

The infractions for which Claimant was guilty are serious, meriting heavy discipline. However, under the circumstances of this case, the discharge penalty is excessive and should be modified. Therefore, the Board directs the reinstatement of Claimant without pay for time lost, but **with** seniority and other rights **unimpaired**.

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

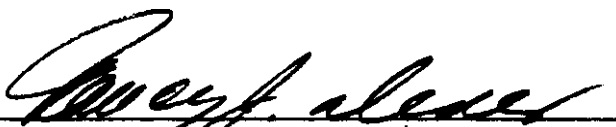
That the discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.

