

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25646
Docket Number MW-25471

Nicholas **Duda**, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company
((Eastern Lines)

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

(1) The dismissal of Laborer-Driver C. **Cormier** for alleged violation of "Rule **M810**" was without just and sufficient cause (System File **MW-83-33/384-33-A**).

(2) The claimant shall be reinstated with seniority and all rights unimpaired and he shall be compensated for all wage loss suffered beginning February 25, 1983.

OPINION OF BOARD: Claimant had been employed by the Carrier approximately five years, most recently as a Laborer-Driver. After being absent on vacation the period of February 14 through 18, 1983, **Claimant** was scheduled to work February 22 through 26, 1983, on the 11:00 p.m. to 7:00 a.m. shift. **He** did not work on February 22 or thereafter. On February 25, he was sent a letter dismissing him for violation of Rule 810 which states in part:

"Rule **M810**: Employees must report for duty at the prescribed time and place... They must not absent themselves from their employment without proper **authority**... **Continued** failure by employees to protect their employment shall be sufficient cause for dismissal."

Claimant requested a hearing on his dismissal, claiming he had received permission to be absent. He also requested that his Foreman and General Foreman be present. At the hearing, Claimant alleged that he had called his Foreman on February 22, 1983, to request permission to be absent the entire week and had received that permission. The Foreman denied receiving any call on February 22nd, reporting that Claimant could be absent or requesting permission for him to be absent from work that week.

The Organization asserts that the discipline should be overturned for the reason that **good** and sufficient cause has **not** been **shown**. Basis for this contention is the Organization statement that:

"A review of Track Foreman **W. Miller Jr.**'s testimony clearly established that he did not **refute** the Claimant's testimony. . . **Moreover**, Foreman **W. Miller Jr.**'s testimony is suspect...

"We are convinced that an objective analysis and an evaluation of the transcript will clearly and conclusively establish that the testimony **introduced**... **neither** justifies **discipline**... **nor** supports the **charges**..."

In this case the Claimant admittedly did not work as scheduled. Unless he satisfied his burden of proving that he had received an excuse, the record supports a finding of cause for discipline. Here the Carrier did not find, based on the evidence at the hearing, that Claimant had been excused. Whether **this** Board would have come to the same conclusion **is** not relevant **or** material. **What** is significant is that there was substantial evidence to sustain a finding of guilt; that finding was not unreasonable.

Having found that there was substantial evidence to sustain a finding of guilty, the Board may not disturb the Carrier's penalty unless the record clearly shows that the Carrier abused its discretion.

In its rebuttal submission, **the** Organization asserted that the Claimant's prior record may not be considered by this Board. We note that the Organization's earlier submission had asserted for the Board's consideration: "Prior to his discharge, Claimant..., with five (5) years of satisfactory work performance..." (Underline supplied). In any event, the Carrier's May 3, 1983, letter to the Organization on the property had specifically enumerated prior discipline issued to Claimant, including discipline for violation of **Rule** M810 only six months prior to the subject violation. For that reason, this Board is not barred from considering **that** discipline record in **reviewing** whether the penalty was inappropriate. Under the circumstances, dismissal was not excessive **or** arbitrary.

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 here; 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. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1985

