

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25799
Docket Number MW-25862

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 F. Garcia for alleged absence without permission on February 3, 4, 14 and 15, 1983 was without just and reasonable cause and a gross abuse of justice and discretion by the Carrier (System File C-D-1788/MG-4019).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, the charge leveled against him shall be removed from his record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The dispute herein was scheduled for hearing before the Board, with the Referee sitting as a member, to begin at 1:30 P.M., September 30, 1985. A Representative of the petitioning Organization was present at the scheduled time, but Claimant was not. The Organization Representative stated that he had understood from Claimant's Attorney that the Attorney would be present. As the Attorney was not present at the scheduled time, the hearing was set back until 2:00 P.M. The Attorney was not present at 2:00 P.M., nor had he contacted the Board. The hearing then proceeded, beginning at 2:00 P.M., with the Claimant represented by the Organization Representative.

There is in existence between the Organization and the Carrier a Memorandum of Agreement, dated July 25, 1977, and effective September 1, 1977, setting forth the procedure for progressive discipline for absenteeism. On February 17, 1983, the following letter was addressed to Claimant, a Trackman, by Carrier's Manager-Engineering:

"You have been absent without permission from proper authority on the following date(s):

February 3, 4, 14 and 15, 1983

"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 previously been given a warning letter on November 2, 1977, were assessed five (5) days' over-head suspension on July 7, 1982, and were assessed ten (10) days' actual suspension on September 3, 1982, account your unauthorized absences, you are now being dismissed from the services of the Railway Company effective the close of business 4:00 P.M., 2/25/83 pursuant to Section 5 of Memorandum of Agreement dated July 25, 1977."

Claim was then filed by the General Chairman of the Organization requesting that Claimant be restored to service and paid for all time lost, or, in the alternative, that he be granted a grievance hearing pursuant to the provisions of the Collective Bargaining Agreement. The hearing was held on May 4, 1983, and a copy of the Transcript has been made a part of the record.

In the hearing Claimant explained that his absences on February 3 and 4, 1983, were due to car trouble - transmission problems; that he attempted to call Officers of the Carrier on February 3 and 4; that he called from Flint, Michigan, to the Agency at Bad Axe, which was located in the same building as the track crew. The contention is made that Claimant had no other means of transportation. This Board has held that mechanical failure of an employee's automobile is a good and sufficient cause to be absent from duty. In Third Division Award No. 20198 it was held:

"...In the absence of a clear showing of alternate transportation to work, it could not reasonably be said that car trouble is not good cause for a one-day absence from work. The role of the automobile in American work life is too well known to require discussion."

See also Third Division Awards Nos. 24730 and 24574.

The Foreman testified in the hearing that he did receive a note on February 3, 1983, explaining Claimant's transmission problems, and that when Claimant returned to work on the following Monday he explained to the Foreman the reasons for his being absent on February 3-4, 1983. The Claimant denied having been instructed or advised by any supervisory personnel that he was to notify the Track Foreman prior to 7:30 A.M. on any day that it was necessary for him to be absent. The Foreman testified that he had so advised the Claimant.

Claimant contended that on February 14, 1983, he was at the Industrial Medical Center, Flint, Michigan, and that he was to return to that Center for follow-up care on February 16, 1983; that he had told the Foreman that he had an appointment on February 14. He admitted, however, that he did not have the Foreman's permission to be absent on February 14, 1983.

In its Rebuttal statement the Carrier contends that two separate absences are involved, February 3 and 4, and February 14 and 15. The record does not indicate that they were so considered in the letter of February 17, 1983.

The Agreement dated July 25, 1977, and effective September 1, 1977, refers to four separate and distinct absences. No specific period of time is fixed in which the absences must occur to finally effectuate dismissal. This Board is without authority to provide what the parties did not include in the Agreement. We note, however, that the four absences mentioned occurred in a period in excess of five years. This appears to the Board to be carrying literalism to the extreme.

Based upon our review of the record, we find and hold that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service. Claimant should understand, however, that his work attendance record is expected to improve. Supervisory personnel should make it clear to employees just what is expected of them in the event they desire to be absent.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1985.