

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25804
Docket Number MW-26069

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(New Orleans Public Belt Railroad

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

(1) The dismissal of Painter F. J. Williams, III, for alleged "*** unauthorized absence from your assigned duties on Thursday, November 3rd and Friday, November 4th, 1983." was arbitrary, without just and sufficient cause and on the basis of unproven charges.

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

OPINION OF BOARD: The Claimant, with about two and one-half years of service, previously employed by the Carrier as a painter, was dismissed from Carrier's service by letter dated November 9, 1983, for unauthorized absence from his assigned duties on November 3 and 4, 1983. He requested a hearing, which was scheduled for and conducted on November 29, 1983. On December 16, 1983, Claimant was notified that his dismissal was sustained. A copy of the Transcript of the hearing conducted on November 29, 1983, has been made a part of the record.

In the hearing it was developed that after sustaining a relatively minor injury to his leg on October 18, 1983, which was initially reported on October 21, 1983, Claimant was released by Carrier's physician on November 2, 1983, to return to his assigned duties on November 3, 1983. Claimant admitted in the hearing that he did not report for duty on November 3 and 4, 1983, nor did he notify anyone in authority on either day that he was unable to report for work.

We find that there was substantial evidence in the investigation to warrant discipline. Absence without authority is a serious offense, often resulting in dismissal. See Second Division Award No. 6710, and Third Division Awards Nos. 25593, 25418, and 22065.

In the handling of the dispute on the property, the Organization contended that the dismissal of Claimant was extremely harsh, excessive, and disproportionate to the alleged offense. The record shows that Carrier offered to reinstate Claimant to service, effective March 19, 1984, on a leniency basis, with seniority rights unimpaired, but without pay for time lost, which offer was rejected by the Claimant.

The Board finds that severe discipline was warranted; however, permanent dismissal was excessive. We will award that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

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 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.