

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25889
Docket Number MW-25622

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it improperly closed the service record of Section Laborer T. D. Montoya (System File D-14-82/MW-21-82).

(2) The Agreement was also violated when the Carrier failed to schedule and hold an investigation which was timely and properly requested in conformance with Appendix 'O'.

(3) As a consequence of the aforesaid violations, Claimant T. D. Montoya shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered including overtime pay."

OPINION OF BOARD: The Claimant, Mr. Thomas D. Montoya, was employed by the Carrier as a Section Laborer at Salt Lake, Utah. The Carrier's evidence shows that Mr. Montoya telephoned his foreman, Mr. A. Archuleta on May 25, 1982, wherein he informed him that he had been released by his physician to return to work, and that he would report to work on May 26, 1982. On June 9, 1982, Mr. Montoya was dropped from the Carrier's service under Appendix "O" of the Agreement because of his failure to report for duty for ten working days. Mr. Montoya reported for work on June 11, 1982, offering a medical release, and he was informed by the Roadmaster that he was no longer an employee of the Carrier. By letter dated June 25, 1982, the General Chairman was notified that Mr. Montoya was dropped on account of failure to report to service. On July 6, 1982, the Organization requested a formal investigation under Appendix "O" on behalf of Mr. Montoya; which request was denied.

Agreement Rule 28, Appendix "O", states in full the following:

"Rule 28 of the current Agreement states that except as provided in Rule 7, an employee who has been in service more than sixty days will not be disciplined or dismissed without an investigation.

It is understood and agreed that an investigation will not be necessary when an employee absents himself from his assignment, without permission, for ten working days or more. Such employee may be dropped at the end of ten working days and the General Chairman will be notified of such action and the reason therefore.

In cases where an employee has been unable to notify his supervisor that he would be unable to report for work because of personal illness or other justifiable cause, such employee may within thirty calendar days from the first day of his unauthorized absence make written request to the proper Carrier officer for a formal investigation.

Signed at Denver, Colorado, the 12th day of April, 1972." (Emphasis added.)

Under Appendix "O" Mr. Montoya had a right to make a written request to the proper Carrier officer for a formal investigation within thirty calendar days from the first day of his unauthorized absence. Mr. Montoya was well aware of the Carrier's position that he had been absent from his assignment, without permission, for the ten working days following his May 25, 1982, phone conversation with Foreman Archuleta. Yet he did not timely request such an investigation.

We have considered the Organization's contention that Rule 25(d) was controlling. However, after May 25, 1982, when Mr. Montoya notified the Carrier that his doctor had released him to return to work on May 26, 1982, Rule 25(d) was no longer controlling. We have considered all evidence of record properly before this Board, and we do not find any violation of the Agreement by the Carrier.

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

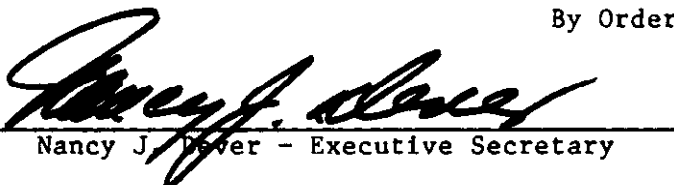
That the Agreement was not violated.

AWARD

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 January 1986.