

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26154
Docket Number MW-26483

Edwin H. Benn, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Port Terminal Railroad Association

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

1. The dismissal of Laborer N. B. Irving for alleged falsification of reason for absence was without just and sufficient cause and on the basis of unproven charges.

2. The claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed by the Carrier as a Laborer. On August 20, 1984, Claimant reported to his Supervisor, Assistant Roadmaster L. Thomas, that he was unable to perform his duties because he was suffering from hemorrhoids. Thomas granted Claimant's request to absent himself from duty. Thereafter, because Claimant had taken off numerous times before because of hemorrhoids (the Carrier asserts 50% of the work time during the year) and in an effort to get Claimant some help for his condition, Claimant was instructed by the Carrier to submit to an examination by the Carrier's physician. The examination showed that Claimant did not suffer from hemorrhoids. Claimant was also examined by his personal physician who likewise determined that Claimant did not suffer from hemorrhoids but did have a past condition of prostatitis.

By letter dated August 30, 1984, Claimant was notified of his dismissal under Rules 84 and 97 which prohibit dishonesty and failing to protect assignments. After Hearing on October 3, 1984, and by letter dated October 11, 1984, the Carrier upheld the original determination to terminate Claimant from employment.

Based upon our review of the record, we are satisfied that substantial evidence exists to support the Carrier's decision to terminate Claimant's employment. Clearly, Claimant stated that he had to take off on August 20, 1984 due to hemorrhoids and had done so numerous times in the past for the same asserted reason. Two medical opinions showed that Claimant did not suffer from hemorrhoids. The Carrier was therefore justified in concluding that Claimant was marking off under false pretenses thereby constituting dishonesty and failure to protect his assignments. Such conduct falls within the prohibitions of Rules 84 and 97. We find nothing in the record to support the Organization's argument that Claimant simply misdiagnosed his condition. Nothing in the record demonstrates to our satisfaction that Claimant was then suffering from a malady sufficiently close in symptoms to that to which he claimed to justify a different result.

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

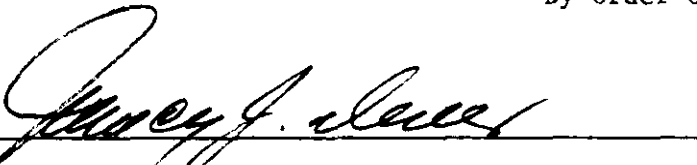
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1986.

