

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26266
Docket Number MW-26482

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

(1) The **dismissal** of Repairman G. A. Allbritain for failure to report for work at starting time on **March** 9 and 15, 1984 was arbitrary, **capricious**, without just and insufficient cause and in violation of the Agreement (System Docket CR-1031D).

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

OPINION OF BOARD: On March 21, 1984, the Claimant was advised to attend a "Investigation to determine facts and place responsibility, if any, in connection with his alleged failure to report for his assignment on time on March 9, 1984, and March 15, 1984. He was also charged with excessive absenteeism because of six (6) other instances in 1984 of absences, late starts or early quits prior to March 9th of that year. After postponement the Investigation was held on April 11, 1984. By notice dated April 27, 1984, the Claimant was advised that he had been found guilty as charged and he was dismissed from service. After appeal of this discipline on property by the Organization up to and including the highest Carrier designated to hear such this case was docketed before the National Railroad Adjustment Board for final adjudication.

A review of the record shows that the Assistant Equipment Engineer at the Carrier's Canton Maintenance of Way Shop, Canton, Ohio testified that the Claimant reported late to work on both March 9 and March 15, 1984. The record also shows that the Claimant was either absent, started late or quit early on **six(6)** other days in the first several months of 1984. In view of this there is sufficient evidence of probative value to warrant the conclusion that the Claimant was guilty as charged. On the merits the instant Claim cannot be sustained. There remains only the issue of whether the discipline issued by the Carrier was arbitrary or capricious. The Board has ruled on numerous occasions that a Claimant's past record can be used when assessing the quantum of discipline (Second Division Awards 5790, 6632; Third Division Awards 21043, 22320). The Board has had the occasion to study the Claimant's prior pattern of absences and his prior disciplinary record in Third Division Award 26265 presented to it concurrently with the instant dispute. The Claimant is a five (5) year employee who had been disciplined four (4) times, prior to his **dismissal**, for unauthorized absences or excessive absenteeism.

After receiving a twenty (20) day suspension (later reduced to a 15 day suspension) on January 4, 1984, the Claimant was either late to work, totally absent, or quit early on eight different times prior to his March 21, 1984, notice to attend the Investigation here at bar. The Board has ruled unauthorized absences or excessive absenteeism are serious offenses which can merit discharge from service (Second Division Awards 6285, 6465, 8103; Third Division Awards 20032, 20505, 20768). In view of the record before it the Board must conclude that such precedent is applicable to the instant case. The discipline levied by the Carrier was neither unreasonable nor unjust.

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 AR D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.