

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26308
Docket Number MW-26647

Edwin H. Be"', Referee

(Brotherhood of Maintenance of Way **Employes**

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company
(Northern Region)

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

(1) The dismissal of **Trackman G.** Suitor for alleged unauthorized absences on May 2 and 16, 1984 was without just and reasonable cause and a gross abuse of justice and discretion by the Carrier (System File C-D-2430/-MG-4800).

(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: Claimant, a Trackman, was dismissed from service after being absent from work on May 2 and 16, 1984 without **permission.**

On May 2, 1984, Claimant was absent because "I had to go to a meeting to sign some very important papers and it involved having this girl sign off on my house so I could sell it." According to Claimant, he was not made aware of the need for the meeting until after he finished working on May 1. Claimant asserts that he made several attempts to call the Track Supervisor's office regarding his need to attend the meeting but could not get through.

On May 16, 1984, Claimant received dental treatment resulting from pain he suffered from previous dental work. According to Claimant, **the** dental work was performed on a " emergency basis. Claimant was at the dentist's office from 8:00 A.M. until 2:00 or 3:00 P.M. Claimant admits that on that date he made no attempts to notify the Carrier about his absence. On May 17, 1984, Claimant requested that he be given two vacation days.

Claimant's prior record shows that during the period September 20, 1983 through November 23, 1983, Claimant received a written warning and suspensions of five (overhead) and ten days for absences without permission. These disciplinary actions were taken pursuant to the July 25, 1977 Memorandum of Agreement between the parties providing for a warning, 5 day overhead and 10 day suspensions prior to dismissal for absences without permission.

The Organization initially argues that Claimant was denied a fair Hearing under Rule 24 of the Agreement in that the Carrier representative rendering the decision following the Hearing was not the same individual conducting the Hearing and the Officer charging Claimant was the same individual

making the decision. On the basis of this record, we conclude that the Organization's position is without merit. First, we note that similar arguments made by the Organization under the specific terms of the 1977 Memorandum of Agreement have not been sufficient to sustain claims for discipline rendered pursuant to that Agreement. See Third Division Award 26050. Second, the facts in this case are basically undisputed. In light of those undisputed facts and the basic language of the 1977 Memorandum of Agreement for resolving disputes arising under that Agreement (see Sections 6 and 7 which permit an employee disciplined under the 1977 Memorandum of Agreement to progress a claim through the regular grievance handling procedure while also recognizing that the provisions of Rule 24 of the controlling **Agreement** do not apply), we find no prejudice suffered by Claimant sufficient to require a different result.

With respect to the merits of the Claim, we find substantial evidence in the record to support the Carrier's decision to discipline Claimant. Claimant clearly was absent without permission on the dates at issue and he was treated in accord with the terms of the 1977 Memorandum of Agreement. In light of that, and on the basis of the record, we cannot say that dismissal was an arbitrary and capricious act by the Carrier so as to amount to an abuse of its discretion. This Board has upheld similar actions under the same Agreement. See Third Division Awards 26051, 26050, 25825, 25414.

Claimant's offered excuses for the absences do not change the result. On May 2, 1984, Claimant could have taken more steps than he did to contact the Carrier. The record discloses that all Claimant did was call the Track Supervisor's office several times only to receive a busy signal. Claimant lived approximately 5 miles from the camp headquarters and he was scheduled to begin work at 7:30 A.M., a time prior to the opening of the bank where his meeting was to take place. If Claimant was having difficulty getting through on the telephone, Claimant could have easily come by the camp office prior to starting time and made his request in person for permission to be off. In light of his recent discipline for being absent without permission, such effort would have been logical. We find the Awards cited by the Organization in its Submission not on point with the issues raised in this matter. In those Awards (see Third Division Awards 24573, 23039, Second Division Awards 8647, **8491**), no Carrier representative was available to take the call from the employee and the employee was not held responsible for that unavailability. Such is not the case here. A Carrier representative was available. Claimant simply made insufficient effort to contact that person. Similarly, with respect to May 16, 1984, Claimant made absolutely no effort to contact the Carrier on that date. We do not view Claimant's dental problems on that date to be of such degree that can excuse him from at least calling the Carrier or having someone else do so and inform the Carrier of his condition and whereabouts.

In light of the clear language of the Memorandum of Agreement addressing absences without permission and the specific disciplinary treatment for **employees** who are absent without permission and further in light of Claimant's prior disciplinary record, we shall therefore deny the Claim.

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

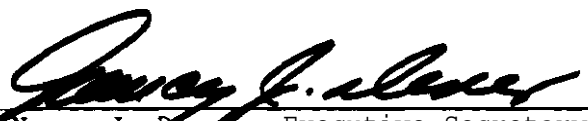
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1987.