

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26450
Docket Number MS-26134

Eckehard Muessig, Referee

(Thomas G. Hall

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"(a) Carrier violated the Agreement when they did on September 1, 1982 dismiss from service Mr. Thomas G. Hall as a result of investigation conducted August 24, 1982 at 10:00 a.m., wherein he had been charged with failure to comply with instructions of his Supervising Officer on July 3, 6, 7 and 9, 1982, and failure to properly protect his assignment in the Computer Center and absenting himself without permission on July 10, 13 and 14, 1982.

(b) Carrier violated the Agreement when they did on September 1, 1982 dismiss from service Mr. Thomas G. Hall as a result of investigation conducted on August 24, 1982 at 11:20 a.m., wherein he had been charged with his refusal to report for **Company** physical examination on July 27 and 29, 1982.

(c) Carrier shall now be required to reinstate Claimant with seniority rights unimpaired, clear his **record** of these disciplines and compensate him for any and all wages lost due to such disciplinary actions."

OPINION OF BOARD: The significant events leading to this dispute began on June 2, 1982. On that date, the Claimant, who was regularly assigned to a clerical position in the Carrier's Computer Operations Center, reported for work wearing "cut-offs" (shorts). He was told by a Carrier Supervisor that "cut-off's" were not proper attire and that in the future, if he did not wear long pants and a shirt to work, he would be sent home. On July 3, 6, 7 and 9, the Claimant reported for duty wearing shorts and he was sent home on each of those days without pay.

On July 10, 13, and 14, 1982, the Claimant was absent from work without proper authority. The Carrier then scheduled an Investigation on July 23, 1982, which focused on charges that the Claimant failed to **comply** with instructions, failed to protect his assignment and was absent without permission.

After the Investigation had been convened, it was recessed, chiefly because the Claimant's appearance, behavior and refusal to speak suggested to Carrier's agent that a medical problem might be present. Subsequently, two (2) medical examinations were scheduled. However, the Claimant cancelled both of these. Another Investigation then was scheduled and held on the basic charge of insubordination for his refusal to report for the medical examinations. He was found guilty of all the charges and was dismissed from the Carrier's service.

The Board has carefully reviewed the voluminous record that has been developed and progressed in this Claim. We have also carefully considered the personal testimony of the Claimant before us. On the basis of this review, which clearly shows that the Claimant was well and actively represented by the Organization until he chose to pursue his own cause, we find that the Claimant **was guilty** of the offenses. Under all of the circumstances, the discipline assessed cannot be said to be excessive and the Claim must fail.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute **due** notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

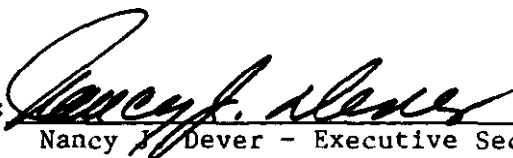
That the Agreement was not violated.

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 24th day of August 1987.