

The Third Division consisted of the regular members and in addition Referee Edwin A. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company

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

(1) The dismissal of Section Laborer T. Swinton for alleged failure to protect his assignment on May 26, 27, 28, 29, 30 and 31, 1985 and for alleged violation of Maintenance of Way Bulletin Nos. 15 and 25 was unwarranted and without just and sufficient cause.

(2) The claimant's personal 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."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By letter dated May 31, 1985, Claimant, a Section Laborer-Truck Driver and an employee since September 1979, was charged with failing to protect his assignment on May 26, 27, 28, 29, 30 and 31, 1985. After investigation held on June 5, 1985, and by letter dated June 6, 1985, Claimant was dismissed from service.

By letter dated January 25, 1985, Claimant had been assessed a 120 day suspension "effective January 26, 1985 and ending May 25, 1985" for failing to protect his assignment on January 3, 1985. At the end of that suspension, Claimant did not contact the Carrier nor did he protect his assignment on the dates listed in the charge. On May 31, 1985, Claimant called the Superintendent of Maintenance of Way stating that his Local Chairman came by his

house and advised Claimant that he was supposed to be back at work. Claimant told the Carrier Officer that he received no notification that he was supposed to come back. The Carrier Officer informed Claimant that the notification was on the original disciplinary notice. The record shows that on January 29, 1985, Claimant received and signed for the January 25, 1985, notification of the 120 day suspension.

Aside from the 120 day suspension of January 25, 1985, for failing to protect his assignment, Claimant's disciplinary record showed letters of warning dated July 22, 1982, August 2, 1982, and May 4, 1983, due to his absences; a thirty day deferred suspension dated February 18, 1983, for failing to protect his assignment; a thirty day actual suspension dated October 20, 1983, for failing to protect his assignment and a ninety day actual suspension dated April 6, 1984, for being absent without authority.

The record therefore clearly establishes that Claimant was notified that he was to return to work after the completion of his 120 day suspension which ended on May 25, 1985, and nevertheless Claimant failed to protect his assignment on the dates alleged in the charge. Substantial evidence in the record therefore supports the Carrier's conclusion that Claimant violated Maintenance of Way Bulletin No. 25 which requires employees to call the Roadmaster's office and receive permission if they are going to lay off. Claimant's assertion that he did not think that he had an assignment and that he was terminated are refuted by the clear language of the January 25, 1985, suspension notice that instructed him that his suspension was for 120 days and was over on May 25, 1985. In light of Claimant's extensive record for the same kind of misconduct, we are unable to conclude that the Carrier's imposition of dismissal was either arbitrary, capricious or an abuse of discretion. We shall therefore deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.