

The Third Division consisted of the regular members and in addition Referee W. F. Euker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Kansas City Southern Railway Company

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

(1) The dismissal of Laborer S. R. Freeman for alleged violation of Rule 'Q' on June 26 and 27, 1986 and July 11 and 29, 1986 was without just and sufficient cause (System File 013.31-355).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and 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 employe or employes involved in this dispute are respectively carrier and employes 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.

This is a discipline case involving a Track Laborer who was charged with unauthorized absences from duty on June 26, 27, and July 1, and 29, 1986, in violation of Rule Q of the Carrier's Operating Rules. A formal investigation was conducted on August 18, 1986, which resulted in Claimant being dismissed from service on September 2, 1986. A Claim for reinstatement and compensation was progressed on the property and is now presented for our consideration.

During the period in question, the Claimant was assigned to Extra Gang 493, Tuesday through Friday, working a 10 hour tour of duty. At the trial, the Foreman of the Extra Gang testified that Claimant did not contact him prior to his absences on the dates in question, as required by Rule Q of Carrier's Operating Rules. There is no real disagreement on this point nor is there a dispute as to the Claimant's awareness and understanding of Rule Q. Claimant offered various excuses for each of the dates listed, unfortunately these excuses, even assuming they were credible, do not explain why Claimant was prevented from contacting Carrier in advance as required by the aforesaid Rule Q.

The record indicates that Claimant has had a history of absenteeism. In Third Division Award 22965, the same Claimant was restored to service without compensation after walking off the job. He has been suspended on a number of occasions for being absent without leave and, in fact, was dismissed early in his career for the same offense, and later reinstated by the Carrier. It is apparent Claimant has had a real problem fulfilling his work responsibilities and Carrier decided it could no longer tolerate his continued unexplained absences from duty. In Third Division Award 22877, the Board held:

"Claimant has been discharged for violation of Carrier Rule Q (attendance rule) once before. He was reinstated by Carrier on a leniency basis after being out of service for about three months. He knew the rules; he saw fit to violate them. His behavior did not improve after his reinstatement; he did not respond to Carrier attempts at his rehabilitation. The need for employees to appear at work on a regular and timely basis is well known in industrial relations and has a special importance in the railroad industry, where time schedules are critical."


Under the circumstances, the Board does not view the discipline assessed as an abuse of Carrier's discretion and we will deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.