

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27929
Docket No. MW-27317
89-3-86-3-429

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Detroit, Toledo and Ironton Railroad Company

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

(1) The discipline (letter of reprimand) imposed upon Track Patrolman R. B. Keefer for alleged absence on December 3, 4, 5, 10, 17, 18 and 19, 1984 was without just and sufficient cause and in violation of the Agreement (Carrier's File 8365-1-189).

(2) The letter of reprimand (dated December 20, 1984) referred to in Part (1) hereof shall be removed from the claimant's personnel file."

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.

Claimant established and holds seniority as a Track Patrolman. He was regularly assigned as such when the incidents involved occurred.

It appears that the Claimant was absent from work on December 3, 4, 5, 10, 17, 18, and 19, 1984.

The Carrier sent a letter to Claimant dated December 20, 1984, which reads as follows:

"Again, it has come to my attention that you have been absent on December 3, 4, 5, 10, 17, 18 and 19, 1984. I feel that you are missing entirely too many days. It is your obligation to protect your position as track patrolman. This has a lot of responsibility of being the eyes of the railroad and to help move trains safely over the track. You

are not living up to this responsibility which you took when you bumped onto this position. If your absence continues appropriate action will be taken.

This letter will be added to your personnel file."

The question raised in this case is the intent of the letter. Was it a warning letter or letter of discipline?

The Rule involved is as follows:

"RULE 34 - DISCIPLINE

- (a) Employees will not be suspended or dismissed from the service without a fair and impartial trial; neither will they be held off duty for minor offenses pending investigation or decision. Employees will be notified in writing ten (10) days prior to date suspension takes effect except when held off duty because of a major offense."

If the letter was a letter of discipline, the Claimant was entitled to a hearing.

In this case, it is clear that the employee had received a letter of warning and the fact that it was placed in his permanent file does not change the nature of the letter. The record shows that the employee had received five (5) previous letters in the nature of "warnings."

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 6th day of June 1989.