

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28000
Docket No. MW-27233
89-3-86-3-322

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company

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

(1) The dismissal of Trackman J. Bais for absence from duty without permission on December 26 and 27, 1985, was unwarranted and exceedingly harsh (System File T-D-3154/MG-5558).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him 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.

In December 1985, Claimant was working as a Trackman under the daily supervision of Foreman Rogers. Claimant did not appear for work as scheduled at 7:30 A.M. on December 26, 1985. He did telephone in at about noon that day and asked the Foreman what time he would have to come in to qualify for Christmas Eve and Christmas Day holiday pay. The Foreman relayed this question to the Assistant Track Supervisor who advised that to qualify for the holiday pay Claimant would have had to report at the 7:30 A.M. normal starting time. Apparently Claimant did show up at about 3:30 P.M. on December 26, shortly before quitting time, but was not allowed to work by Foreman Rogers. Claimant again was absent on December 27, 1985, but sometime during the day one of his sisters called Carrier's offices and stated that he would "not be in that day."

By formal notice of December 27, 1985, Claimant was summoned to a hearing on January 15, 1986, into charges of absence without authority. At the hearing, Claimant admitted being absent without permission but asserted that he had attempted to reach supervision by telephone on December 26 and December 27, but that the line was busy or no one answered. He stated further that his absence on the two days was occasioned by a medical emergency involving one of his sisters which required his presence with her at the hospital continuously on December 26 and December 27, 1985.

At the request of his representative, Claimant was granted an extension of five (5) additional days by Carrier to obtain a statement or other evidence from medical and/or hospital authorities to verify his bare assertions of a medical emergency to justify his absence from work. The investigation record was held open until January 20, 1986 for Claimant to come forward with such evidence, but he never did so. Thereafter, by letter of January 29, 1986, Carrier found him guilty of unjustified absences without leave on December 26 and 27, 1985. Upon reviewing his prior record of progressive discipline for similar offenses Carrier terminated his employment.

In the facts here presented, the burden of persuasion was upon Claimant to provide evidence in support of his assertions that a family medical emergency justified his absence from work. Despite being given a fair opportunity to provide such evidence, Claimant offered only bare assertions without corroboration. The only probative evidence of record on this point is a birth announcement showing that Claimant's sister gave birth to a child on December 25, 1986. No other evidence was offered to support the claim of family medical emergency requiring his personal presence during his working hours.

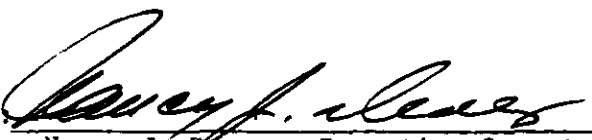
In the circumstances we find no legitimate basis to reverse Carrier's conclusion that Claimant was absent without authorization or justification on December 26 and 27, 1985. During his eighteen months of employment with Carrier, Claimant was cited for numerous instances of unauthorized absences, including a ten-day suspension without pay in September 1985, for an identical offense. There is no basis for finding that Carrier acted arbitrarily or unreasonably in assessing the termination penalty for this most recent proven offense.

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 31st day of July 1989.