

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29882
Docket No. MW-30023
93-3-91-3-379

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

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

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

- (1) The dismissal of Laborer Driver R. Flores for alleged absence without proper authority or notifying the Roadmaster's office on March 30, 31, April 1, 4, 5, 6, 7 and 8, 1990 in violation of Bulletin No. 17 was arbitrary, unwarranted and in violation of the Agreement (System File 90091/1142).
- (2) The Claimant shall be reinstated with seniority and all other rights unimpaired, he shall have 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 employe or employes involved in this dispute are respectively carrier and employe 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 was employed by the Carrier as a Laborer/Driver on a 7:00 AM to 3:30 PM assignment with Monday and Tuesday as assigned rest days. On eight consecutive work days during March and April, 1990, Claimant failed to report for his assigned position. On Monday, April 9, 1990 (his assigned rest day), Claimant appeared at

his headquarters location and informed the Roadmaster that "he had been off work and needed some assistance with a problem that he was having." After consultation with the appropriate authority, the Roadmaster gave Claimant permission and authority to enter into Carrier's Employee Assistance Program. As of June 15, 1990, the EAP Counselor advised that "effective this date, Mr. Ramon Flores is not enrolled in the EAP Program."

In the meantime, by letter dated April 23, 1990, Claimant was notified to appear on April 27, 1990, to answer charges relative to his alleged failure to protect his assignment without proper authority on the eight consecutive work dates referenced above. By agreement of the parties, the Investigation was postponed to July 26, 1990, at which time Claimant was present, represented and testified on his own behalf. Following the completion of the investigatory hearing, Claimant was notified by letter dated July 30, 1990, that he had been found guilty as charged and was disciplined by dismissal from service.

The record in this case is substantial in support of the action as taken. There is evidence to support the charge that Claimant was absent from his assignment without proper authority on the charged dates and failed to offer any satisfactory evidence to justify his absence. There is also evidence to support Carrier's position that Claimant failed to take advantage of the EAP Program which was offered to him. The Director Labor Relations specifically asked the employee representative to "please furnish me with a copy of any record you may have showing that he completed and has been released by the EAP Counselor". Nothing was received. Additionally, the prior employment and discipline record of this Claimant, which record was properly considered and discussed during the on-property progression of this case, does not instill confidence or tend to suggest that Claimant has learned from the several warnings, deferred suspensions and actual suspensions which have been issued in the past for similar derelictions relative to his work attendance. Such a pattern of failure to protect his work assignments justifies severe discipline. Dismissal from service on the basis of the record in this case was not excessive or arbitrary discipline.

The claim for reinstatement and payment for time lost is denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *Catherine Loughrin*
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.