

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36029
Docket No. MW-35776
02-3-99-3-757**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator D. W. Stansberry for his alleged unauthorized absence from July 4 through 29, 1998 was without just and sufficient cause, excessive, arbitrary and in violation of the Agreement (System File MW-98-213/1159017 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator D. W. Stansberry shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered, as well as expenses for attending the hearing held on August 12, 1998, and have his record cleared of this incident.”**

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 employee 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 were given due notice of hearing thereon.

At an August 12, 1998 Investigation, the Claimant was found guilty of violating Rule 1.15 and, as a result, was dismissed pursuant to the Carrier's UPGRADE discipline policy.

The Organization submitted a claim contending that the August 12 Investigation was not conducted "properly." According to the General Chairman, the Claimant's Supervisor, R. White, withheld the Claimant from service before he had a fair and impartial Hearing, thereby violating Rule 12 of the Agreement.

With respect to the merits of the issue, the Organization alleges that the Carrier failed to produce sufficient evidence to support the charges which led to the Claimant's discharge. The General Chairman noted that the Claimant became ill on June 30, 1998 and on July 1 was admitted to the hospital after being diagnosed with Salmonella. Thereafter, the Claimant reported his condition to the Carrier as soon as his health allowed, according to the General Chairman.

Finally, the General Chairman stated that:

"The Carrier is unfeeling toward its employees, especially when they are ill and the UP supervisors are very insecure of their positions and can also suffer from amnesia, as shown in the situation with Mr. Stansberry."

For its part, the Carrier asserts that the Claimant was absent, without permission, on July 4, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28 and 29, 1998. Specifically, the Carrier asserts that the Claimant was discharged due to "continued failure to obey the rules of the Carrier through his absence without authority."

At the outset the Organization asserts that the Claimant's rights were violated as a result of certain procedural errors. However, we find no evidence on this record which supports that assertion, nor do we find any evidence that the Claimant's rights were compromised in any way throughout the proceedings.

Turning to the merits of the dispute, Rule 1.15 - DUTY - REPORTING OR ABSENCE states that:

“Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignments without proper authority.”

A review of the Claimant's personal record reveals that he was first assessed discipline (a letter of reprimand) for a violation of Rule 1.15 on January 6, 1998. On February 13, 1998, the Claimant was assessed discipline for a second violation of Rule 1.15. The Claimant was again charged with violating Rule 1.15 on February 23, 1998, constituting the Claimant's third violation of the Rule.

With respect to the issue before us, according to Supervisor White's undisputed testimony the Claimant did not request authorization to be absent on the dates at issue, nor did the Supervisor grant him same. In that connection, the Claimant stated the following:

“Q. Have you worked since June 30?

A. No.

Q. Have you notified Mr. White, your supervisor, that you were going to be absent anytime since June 30?

A. No.

Q. Are you aware of your obligation to notify your supervisor when you're going to be absent?

A. Yes.

Q. Mr. Stansberry, have you ever been counseled before concerning your work attendance?

A. Yes.”

With respect to the quantum of discipline assessed, the Carrier's Upgrade discipline policy states: “If an employee commits three repetitions of the same rule

infraction during a 36 month period (excluding missed calls and tardiness) the discipline will be assessed at a Level 5 - Permanent Dismissal."

The Claimant was disciplined on three prior occasions for absenteeism without authority. It is clear that progressive discipline did not deter the Claimant from engaging in misconduct for a fourth time in a period of less than 12 months. In the circumstances, this claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of May, 2002.