

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36367
Docket No. MW-36259
03-3-00-3-487**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern Pacific
(Transportation Company (Western Lines))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Track Laborer J. T. Angangan for his alleged absence without authority from January 28 to February 18, 1999 was without just and sufficient cause, based on unproven charges and in violation of the Agreement (Carrier's File 1200957 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. T. Angangan shall now be reinstated to the service of the Carrier on his former position, with seniority and all other rights restored unimpaired, compensated for net wage loss suffered by him, and the alleged charge(s) be expunged from his personal record."**

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.

On March 19, 1997 the Claimant established seniority in the Track Subdepartment. In February 1999 the Claimant was working as a Track Laborer on Gang 8783 headquartered at Roseville, California. His Supervisor in this gang was R. L. Foster. On January 28, 1999 Supervisor Foster granted the Claimant permission to be off work that day for personal business.

On February 18, 1999 Supervisor Foster notified the Claimant by certified mail that pursuant to Appendix "R" of the Agreement between the Brotherhood of Maintenance of Way Employees and The Southern Pacific Transportation Company (Western Lines) his employment relationship was terminated due to his purported continuous absence from work without authority since January 28, 1999. Appendix "R" provides as follows:

"In connection with the application of Rule 45 of the current agreement, this will confirm our understanding reached in conference today that to terminate the employment of an employee who is absent from duty without authority, the Company shall address such employee in writing at his last known address, by Registered or Certified Mail, return receipt requested, notifying him that his seniority and employment have been terminated due to his being absent without proper authority and that he may within 30 days, if he so desires, request that he be given an investigation under Rule 45 of the current agreement."

On March 10, 1999 the Claimant invoked his right to an Investigation pursuant to Appendix "R." The Investigation was held on April 15, 1999. At that Investigation, the Claimant insisted that he made several attempts to contact Supervisor Foster between February 1 and 19, 1999 to apprise him that he was sick/injured and unable to report for work, but never did contact him. The Claimant maintained that he left several messages on Supervisor Foster's voice mail at his office in Roseville, California. He claimed that Supervisor Foster never responded to any of his voice mail messages.

On May 4, 1999 the Carrier advised the Claimant that it carefully considered the evidence adduced at the April 15, 1999 Hearing and that it was reiterating its February 18, 1999 decision to terminate his employment and seniority. The Organization appealed that decision on the property to the Board.

That Appendix "R" is a self-executing negotiated Rule cannot be gainsaid. It provides that employees who are absent from duty without authority will have their seniority and employment terminated provided that the procedural prerequisites of the Rules are met. The Claimant was absent from duty without authority from February 1 to

February 18, 1999. Therefore, the Carrier had the right under Appendix "R" to terminate his seniority and employment.

It is undisputed that between February 1 and 22, 1999 the Claimant never contacted Supervisor Foster to explain his absence from duty. He knew how to contact Supervisor Foster because he had called his cellular telephone number, pager number, and office number on January 28, 1999, one day prior to his unauthorized absence from duty.

According to the Claimant, he made numerous calls to Supervisor Foster's cellular telephone number and to his office telephone number in February 1999, but was unable to contact him. However, he admitted that he made no attempt to contact any other supervisor or foreman to explain his absence from duty. The Board finds it noteworthy that after the Claimant received the February 18, 1999 notice that his seniority and employment were terminated he was able to contact Supervisor Foster on February 22, 1999.

For all the foregoing reasons, the Board finds that the Carrier had the right to terminate the Claimant's seniority and employment in accordance with the self-executing terms of Appendix "R." His claim is denied as a result.

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 14th day of January 2003.