

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21381
Docket Number MW-21326

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago and Eastern Illinois Railroad Company

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

(1) The discipline assessed Trackman L. Gaines was without just and sufficient cause and wholly unwarranted (System File M 214-38).

(2) The personal record of Trackman L. Gaines be cleared of the charges placed against him and reimbursement be made for wage loss suffered, all in accordance with Rule 34 (d).

OPINION OF BOARD: This is a discipline dispute in which Claimant was assessed a thirty day deferred suspension for "absenting himself without proper authority". Both parties to the dispute raised issues in their submissions and rebuttals which were not handled on the property and hence not properly before this Board; all such argument and evidence will not be considered.

There is no question from the record of the investigation that Claimant was guilty as charged: he did leave work without permission allegedly in order to take care of children who were left unattended. The sole question which was handled on the property was whether there were mitigating circumstances surrounding the incident and therefore whether the discipline assessed was unreasonable.

The record indicates that Claimant left work during an overtime period caused by a derailment. He told his foreman that he wished to leave work since his wife went to work at 4:00 P.M. and there were children home alone; his foreman did not grant his request and he left anyway. There is no question relative to the facts and the procedure. Were the circumstances sufficiently serious to warrant our upsetting the discipline imposed? We think not. An unauthorized absence is frequently cause for dismissal in this industry. Claimant's failure to make adequate preparations for care of his children cannot be in any way attributed to Carrier; he must suffer the consequences of parental concern and poor planning. It is well settled that this Board will not substitute its judgment for that of Carrier unless the discipline imposed is unjust, unreasonable, capricious or arbitrary. In this dispute we find no basis warranting our interference.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.

