

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21834
Docket Number MW-21975

Herbert L. Marx, Jr., Referee

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

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

(1) The dismissal of Laborer J. M. Rodriguez was without just and sufficient cause and based in part on other than the charge that was placed against him.

(2) The claimant shall be reinstated to service with seniority, vacation and all other rights unimpaired and he shall be paid for any monetary loss suffered as a result of his dismissal.

OPINION OF BOARD: Claimant was advised by notice dated June 22, 1976, that he was dismissed from service "for your failure to protect your job assignment, Section Gang #7 on May 27, 1976 and for your violation of Rule 'B' of the Uniform Code of Safety Rules."

The Claimant was withheld from service beginning May 28, 1976. He was directed to attend an investigative hearing on June 10, 1976, in connection with his absence on May 27, 1976, "and to discuss your past work record".

The Board finds no fault with the hearing conducted by the Carrier's hearing officer; Claimant and his representative had ample opportunity to present his defense. No satisfactory reason was developed for Claimant's absence on the date in question, either at the time of his absence or at the hearing.

The single absence cited in the hearing notice would not, standing by itself, be sufficient to warrant a penalty as severe as dismissal. In weighing the severity of discipline, however, the Carrier may properly consider the past record of the employee, especially where identical offenses had been committed previously. Claimant's record, of which he was advised in advance would be reviewed, showed an egregious pattern of failure to protect his assignment in many instances over the

previous five months. Under these circumstances, the Board finds no basis to interfere with the Carrier's decision to dismiss the Claimant. Continuation of the Claimant's attendance record would have been unacceptable.

With this conclusion, the Board need not pursue the allegation of violation of Rule "B" of the Uniform Code of Safety Rules.

There is, however, one aspect of the Carrier's action which remains in question: the Claimant's being withheld from service pending investigation of subsequent disciplinary decision. Rule 12-A reads in part:

(A). An employee whose application has been approved will not be suspended or dismissed without being given a fair and impartial hearing, except that, if the offense is considered sufficiently serious, the employee may be suspended pending the hearing and decision. . . .

This rule restricts the Carrier in suspension or dismissal of an employee in that such action may not take place prior to a hearing unless the offense is "considered sufficiently serious". Numerous previous Awards have described the circumstances in which such suspensions are appropriate. Among these is Award No. 6659 (Third Division) which states in part:

. . . The purpose of the rule is to permit immediate suspensions when the nature of the offense in all the circumstances is such that continuance of the employee in service pending investigation would endanger the safety of operations, interfere with the orderly performance of work or disrupt the administration of discipline. . . .

In the present case, the Claimant's repeated failure to protect his job assignment was "serious" in its eventual consequences, but -- as in Award No. 6659 and many others -- the Board finds none of the usual justifications for suspension prior to a hearing.

While the Board will not interfere with Claimant's dismissal for good cause, the claim is sustained to the extent of making the Claimant whole for monetary loss of regularly scheduled work between the date of his suspension and the date of issuance of the letter of dismissal.

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 violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.