

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22226
Docket Number MW-22265

Nathan Lipson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
((Southern Region)

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

(1) The dismissal of Trackman Robert L. Jacobs because of absences from duty on November 22, December 3 and 8, 1976 was without just and sufficient cause and extremely disproportionate to the offense with which charged [System File MG-1774/C(So)-D-397].

(2) The claimant shall be restored to service with seniority, vacation and all other rights unimpaired and he shall be paid for all time lost as a consequence of the aforesaid dismissal."

OPINION OF BOARD: The operative facts in this case are not in dispute. Claimant was admittedly absent from duty without permission on the three (3) cited dates. Claimant had previously been assessed a fifteen (15) day suspension for unauthorized absence. The stated situation which existed in Award No. 14601 of this Division is identical to what we find here. There we found that:

"* * * The gravamen of the claim rests on the premise that the discipline assessed is excessive and too severe. There are no allegations of procedural defects nor any denial of Claimant's guilt."

Given this factual situation and in view of our limited function as an appellate forum in which we may not substitute our judgment for that of the Carrier where the finding of guilty as charged is supported by substantial evidence, we must conclude in this instance that there is no justification to overturn the discipline as assessed.

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 15th day of November 1978.

