

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22328
Docket Number MW-22382

Abraham Weiss, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes
{ Port Terminal Railroad Association

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

(1) The dismissal of Trackman R. J. Johnson was without just and sufficient cause and wholly disproportionate to the offense with which charged.

(2) Claimant R. J. Johnson shall be allowed eight (8) hours' pay at the trackman's straight-time rate for each work day and holiday within the period beginning February 1, 1977 and ending on the date he is reinstated with seniority and vacation rights unimpaired."

OPINION OF BOARD: Claimant, a trackman in Carrier's Maintenance of Way Department, was dismissed, following a formal hearing, for leaving his assignment without permission on January 31, about two hours after he reported for duty. At the time of the incident, Claimant had been in Carrier's service for five months.

Neither on January 31 nor on the following day, when he reported for duty, did Claimant state he was ill or was going to see a doctor. Several witnesses testified to this effect.

There was a conflict in testimony as to whether Claimant had received permission to leave. Claimant asserted his foreman had granted such permission; his foreman denied it, adding that Claimant gave no reason for wanting to leave.

At the hearing, Claimant's representative presented a doctor's certificate dated January 31, which indicated that he had been treated for hypertension on that same day. Carrier stated that it knew that Claimant suffered from hypertension at the time he was employed.

The record also contains testimony by the Assistant Trainmaster that his questioning of Claimant (in the presence of the Roadmaster) on February 1 elicited from Claimant the statement that he left his assignment the day before because "he was cold"; that he had not told his foreman that he was ill or that he had business to attend. At the time of the questioning, Claimant made no reference to visiting his doctor the day before nor did he furnish a doctor's certificate.

No witnesses were called in Claimant's behalf, although he testified at the hearing that six fellow employes heard the foreman approve his leave.

Claimant gave no reason for wanting to leave at the time he left his job. The doctor's certificate was first introduced at the formal hearing, by Claimant's representative.

The record indicates a previous history of difficulties during Claimant's relatively brief period of service with the Carrier.

Under the circumstances, we do not consider management's action to be arbitrary or capricious, and must, therefore, support Carrier's decision.

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.

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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 February 1979.