

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22834
Docket Number MW-22866

Rodney E. Dennis, Referee

PARTIES TO DISPUTE

(Brotherhood of Maintenance of Way Employees
(
(Fort Worth and Denver Railway Company

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

(1) The dismissal of Trackman F. P. Simmons was arbitrary, capricious, without just cause and on the basis of unproven and disproven charges [System File F-5-78/G-90 (MW)].

(2) Trackman F. P. Simmons be reinstated with all rights and benefits unimpaired and he be compensated for all wage loss suffered, all in accordance with Rule 26(c)."

OPINION OF BOARD: Claimant, a trackman with about four years of service, was assigned to Section 24, headquartered in Channing, Texas. On February 12, 1978, claimant was notified that he was to appear on February 17, 1978, to attend an investigation designed to ascertain certain facts, assess his responsibility for an alleged absence from work on February 3, 1978, and to review his record of unauthorized absences during the month of January 1978. The investigation was postponed until February 23, 1978. The record of that investigation has been made part of the present record.

As a result of that investigation, claimant was dismissed from service. He was charged with not arranging for a proper leave and excessive absenteeism. The Board has carefully reviewed the entire record and finds that claimant's substantive procedural rights were not violated.

The record reveals that claimant last worked on January 6, 1978, and that he did not personally inform the company of his whereabouts or of his condition, and that he did not indicate to them why he was absent from work until the hearing on February 23, 1978. He did not, as is required by agreement, arrange for a proper medical leave, nor did he offer any evidence at the investigation to support his statement that he was under a doctor's care and had been operated on, as he claimed.

At the hearing, claimant was given an opportunity to present evidence and documentation to support his position. The record is barren

of any supporting material. This Board has consistently, over a long period of time, enunciated its position on absenteeism and the railroad's right to require regular attendance of its employes. It need not be repeated in this case. Claimant is guilty as charged in the February 3, 1978 letter. He has what can only be characterized as an atrocious work record. He has been offered numerous opportunities to mend his ways. He saw fit, at his own peril, to maintain an irregular attendance record and failed to keep his employer informed about his availability for work.

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 Employes involved in this dispute are respectively Carrier and Employes 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 16th day of May 1980.

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