

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22861  
Docket Number MW-22781

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Trackman Ray Johnson, Jr. was without just and sufficient cause and was wholly disproportionate to the offense with which charged /System File C-4 (13) - RJ/12-39 (77-22) J/.

(2) Claimant Johnson shall be returned to service with seniority and all other rights unimpaired and with compensation for all wages lost as a result of his dismissal."

OPINION OF BOARD: Claimant was employed by the Carrier as a track laborer and was assigned to Section Force 6768.

On June 14 and 15, 1977, claimant did not report for duty at his regular starting time. Rule 17(b) of the applicable agreement reads:

"(b) An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer."

When claimant returned to work on June 16, 1977, he stated that he had had car trouble. He was told by the foreman that it would be necessary for him to secure a receipt for the repair work to his car or other suitable proof of his inability to report for work on the two previous days. On June 17 he again reported to work without proof of his inability to report on June 14 or 15 or to call his supervisor. On June 17 he was instructed to report to the Roadmaster's office, but did not do so. On June 23, 1977, he was notified by the Assistant Roadmaster:

"Reference Mr. Watson's request of June 16 and 17, 1977, that you furnish reason of your absents (sic) of June 14 and June 15, 1977. I am informed by Mr. Watson that you did not furnish any reason of your absence upon your return to work on June 20, 1977. I feel you have had sufficient time to get proof of the necessity of your absence and since no proof has been offered or furnished,

"you are therefore charged with violation of Rule 17-B of the current working agreement between Seaboard Coast Line Railroad Company and the Brotherhood Maintenance of Way Employees, effective July 1, 1968, which reads as follows:

'An employee desiring to be absent from service must obtain permission from his Foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer.'

"You are also charged with a portion of Rule 18 of the Safety Rules for Engineering and Maintenance Employees which reads, 'Insubordination will subject the offender to dismissal.'

"Mr. T. C. Herndon, Division Engineer, Tampa, Fla., will advise you of date, time and place your hearing will be held."

The investigation was scheduled for July 6, 1977, and postponed until July 8, 1977. Claimant was present at the investigation and was represented by an officer of the Organization. On July 18, 1977, claimant was dismissed from Carrier's service.

A copy of the transcript of the investigation conducted on July 8, 1977, has been made a part of the record. A careful review of the transcript shows that none of claimant's substantive procedural rights was violated. There was substantial evidence adduced at the investigation in support of the charges against claimant. Also claimant's prior record with respect to absenteeism was far from satisfactory. He had been warned repeatedly concerning absenteeism and had previously been suspended from service on two occasions for the same offense.

Based on the record before it, there is no proper basis for this Board to interfere with the discipline imposed, which was not arbitrary, capricious or in bad faith.

**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;

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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. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1980.