

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22958  
Docket Number MW-23037

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 Eddie Lee Curry was without just or sufficient cause and wholly disproportionate to the offense with which charged /System File C-4(13)-ELC/12-39(78-9) J/.

(2) Trackman Curry's personal record shall be cleared of the charge levelled against him; he shall be returned to service with seniority and all other rights unimpaired; and, he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to his dismissal, claimant was employed as a trackman, and was assigned to Section Force 5512, headquartered at Eastover, South Carolina.

On Friday, September 30, 1977, claimant did not report for duty at his regularly scheduled time. He did not report for duty on October 3 through October 7, 1977.

Paragraphs (b) and (c) of Rule 17 of the applicable Agreement provide:

"(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.

"(c) An employee off duty account of sickness or for any other good cause must notify his foreman or the proper officer as early as possible. In case of sickness or injury they will not be required to secure leave of absence to protect their seniority, but may be required to furnish proof of disability."

When claimant reported for duty on October 10, 1977, he stated that he was just "tired". He did not claim to have been sick, or that he had gone to a doctor. On October 7, 1977, he was notified:

"Account of your actions on Friday, September 30, and during the entire week of October 3 when you were absent from duty without permission and when, on some of those days, you failed to notify the railroad concerning your absence, you are hereby charged with violation of Rule 17, paragraphs (b) and (c) of the agreement between the Seaboard Coast Line Railroad Company and the Brotherhood of Maintenance of Way Employees. The applicable portions of the rules are quoted below:

(Paragraphs (b) and (c) of Rule 17 quoted)

"Hearing on these charges will be given you in the office of the Roadmaster, Sumter, S. C., 1:30 PM, Tuesday, October 11.

"You may have representation if you so desire in accordance with the agreement under which you are employed and you may arrange to have present any witnesses who have knowledge of the matter.

"Your personal file will be reviewed at the hearing."

The investigation was conducted as scheduled, and on November 2, 1977 claimant was notified of his dismissal from service. A copy of the transcript of the investigation has been made a part of the record.

The Board has carefully reviewed the transcript of the investigation and we find that none of claimant's substantive procedural rights was violated. There was substantial evidence adduced at the investigation in support of the charge against the claimant.

The record also shows that claimant had previously been disciplined on a progressive basis for similar offenses.

The claimant's actions in the present case, coupled with his prior record, justified the Carrier in imposing the discipline that it did.

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;

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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. Paulos

Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.