

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23024  
Docket Number MW-23046

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 Leon Spencer was without just and sufficient cause and was exceedingly disproportionate to the offense with which charged (System File 12-39 (78-13) J/C-4 (13) - IS).

(2) Trackman L. Spencer shall be returned to service with seniority and all other rights unimpaired, the charge levelled against him be stricken from his record and he shall be reimbursed for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a trackman, with approximately six years of service, and was assigned to Section Force 8164 at Bradley, Florida.

Claimant marked off because of illness from November 14 through November 22, 1977. Upon his return to work on November 23, the Roadmaster gave him a letter, and instructed him to take it to his personal physician and return it to the Roadmaster. The Roadmaster heard nothing further from the claimant and on November 28 he called the claimant's doctor. He was informed that the letter had been completed by the doctor, but claimant did not come back on November 23 and pick it up as he indicated he would.

Claimant contacted the Roadmaster on December 5, 1977, and the Roadmaster instructed him to return to work. He was asked why he did not return the letter from the doctor on November 23, as instructed. He said his truck was broken down and he did not have any transportation, and indicated that he did not have a telephone when asked as to why he did not get in touch with the Roadmaster or Foreman to explain the situation.

On December 6, 1977, claimant was notified by the Roadmaster:

"Account of you being absent from work on November 25, 28, 29, 30, and December 1 & 2 without proper excuses you are hereby charged with violation of Rule 17-B of working agreement between the S.C.L. Railroad and the Brotherhood of Maintenance of Way Employees.

Rule 17-B is 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 will be granted a hearing as per agreement with the Brotherhood of Maintenance of Way Employees. You will be notified of the date and time of this hearing."

The hearing was scheduled for 1:00 P.M., December 16, 1977, and was conducted on that date with the claimant present and represented. A copy of the transcript of the hearing has been made a part of the record. Claimant was dismissed from service on January 4, 1978.

Substantial evidence was adduced at the hearing on December 16, 1977, showing that claimant was in violation of Rule 17-B of the applicable agreement, and also that he did not comply with the instructions given him by the Roadmaster concerning the letter to be completed by his doctor.

The record also shows that claimant had been warned on eight prior occasions concerning violation of Rule 17-B, and that he had previously been disciplined for the same offense. Apparently the prior warnings and discipline did not have the desired effect.

Based upon the entire record, there is no proper basis for this Board to interfere with the discipline imposed.

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 28th day of October 1980.