

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23038
Docket Number MW-23136

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(New Orleans Public Belt Railroad

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

(1) The dismissal of Trackman H. L. Parker was without just and sufficient cause and was wholly disproportionate to the offense with which charged (Carrier's File 013.7).

(2) Trackman H. L. Parker shall be reinstated to his former position with all seniority, vacation rights, insurance coverage and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Mr. H. L. Parker, the claimant, was employed as a Trackman by the Carrier on October 15, 1973. On October 24, 1978, he was dismissed from service account continuous unauthorized absences from duty. In compliance with Rule 16 (b) of the Agreement between the parties the Carrier upon written request from claimant set a date of November 13, 1978, for hearing his charges of being unfairly dismissed. The Carrier's letter of November 2, 1978, notifying claimant of the hearing specifically advised him to be prepared to discuss his absences from his duties as Trackman on October 13, 14, 20 and 21, 1978.

The hearing was held on the date set, November 13, 1978, a copy of the transcript was made a part of the record. A careful review of the transcript reveals claimant was given a fair and impartial hearing as required by the Rule.

Rule 10 (b) of the Agreement, involved here, reads:

"An employee paid on an hourly rate who absents himself from his duties for more than one (1) day without first having obtained informal leave of absence from his immediate superior may, at the latter's option, be summarily disciplined or dismissed from the service."

The Board finds the record clearly shows claimant was in violation of Rule 10 (b) in that he failed to obtain authority from his immediate superior before absenting himself from duty on the four days named above. The same Rule gives his immediate superior authority to summarily dismiss claimant from service as he was absent without authority for more than one day.

Claimant contends he attempted to contact his superior but was unable to do so, which contention this Board rejects. The Rule is clear and not unreasonable. The Carrier has a right to expect its employees to protect their assignments and to be notified in advance of absences in order to find replacements.

The Board finds Carrier did not violate the Agreement. However, we must examine claimant's record to determine if the punishment fits the crime. In the claimant's five years of service with Carrier he was suspended three times account absent without authority, five days each time; April 1976, May 1977, and June 1978. He was also counseled in July 1978 for the same offense, but not suspended.

The Board finds it too harsh a punishment to deny claimant, under the circumstances prevailing here, his livelihood. Two years out of service is adequate. We therefore award his reinstatement with full seniority and all other rights unimpaired but without back pay. And, in view of claimant's absentee record, this Award should be made a part of his personal record.

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 Employee involved in this dispute are respectively Carrier and Employee 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 discipline imposed was excessive.

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Claim sustained in accordance with Opinion.

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.

CARRIER MEMBERS' DISSENT
TO
AWARD NO. 23038, DOCKET NO. MW-23136
(Referee Lowry)

Dissent to this Award is required because the applicable rule involved does not allow for reinstatement when guilt is proven.

Rule 10(b) of the Agreement involved here reads:

"An employee paid on an hourly rate who absents himself from his duties for more than one (1) day without first having obtained informal leave of absence from his immediate superior may, at the latter's option, be summarily disciplined or dismissed from the service." (Emphasis added)

The majority properly found that the claimant was in violation of Rule 10(b) in that he failed to obtain authority from his immediate superior before absenting himself from duty on the four days named.

The majority correctly determined that accordingly this same Rule gives his immediate superior authority to summarily dismiss claimant from service since he was absent without authority for more than one day.

The majority correctly found that the Carrier did not violate the Agreement and also notes that during claimant's five years' of employment he was suspended from service for this same offense in April 1976, May 1977, and June 1978, and, in addition, was admonished for this same offense in July, 1978.

On four previous occasions Mr. Parker could have been summarily dismissed from service, instead he was suspended three times and admonished once.

Rule 10(b) is absolute and does not allow for the restoration to service and does not permit reversal of the decision rendered when guilt has been established.


Once guilt is proven, Rule 10(b) stipulates that the immediate superior may, at his option, summarily discipline or dismiss the employee. Here, for obvious reasons, Mr. Parker was dismissed from service and that decision should not have been modified.

Here the clear language of the Rule was ignored and the Majority should have confined itself to the record and the actual language of the Rule.

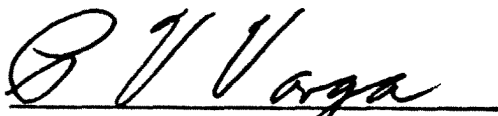
Accordingly, for the foregoing reasons, we must dissent from the Board's Award in this matter.


P. E. LaCROSSE


W. F. EUKER


J. E. MASON


J. R. O'CONNELL


P. V. VARGA