

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23079
Docket Number MW-23133

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

- (1) The dismissal of Clyde L. Davis for alleged insubordination was unwarranted and without just or sufficient cause (System File C#92/D-2218).
- (2) Clyde L. Davis be reinstated with seniority, vacation and all other rights unimpaired and be compensated for all wage loss suffered.
- (3) Clyde L. Davis be allowed medical expenses incurred because of the personal injury he suffered on May 3, 1978."

OPINION OF BOARD: The Claimant herein, a section laborer, allegedly hurt his hand in the performance of his duties on May 3, 1978. The Carrier advises that Claimant's foreman told him that if he wanted to go to a doctor, he should fill out a No. 171 Personal Injury Report. The Claimant did not fill out the Personal Injury Report, but left his assignment at that time without advising his supervisor and did not return. On May 18, 1978 a letter was sent to Claimant by Carrier's Roadmaster:

"This to advise that you have been dismissed from the services of the Chicago, Milwaukee, St. Paul & Pacific Railroad for being absent from work without proper authority per Rule M-702 of the Operating Rules for Employes in the Maintenance of Way and Structures.

You will arrange to turn into Mr. V. E. Robinson, Section Foreman, all railroad property presently in your possession."

Rule 18(b) of the applicable collective bargaining Agreement provides:

"An employe who has been disciplined or dismissed, or who considers himself unjustly treated, shall be given a fair and impartial hearing before the officer designated by the Railroad Company to handle such matters, provided that request for hearing is made in writing to the Superintendent within ten (10) days from the date of advice of discipline or complaint. The hearing shall be held within ten (10) days from date of request for hearing and decision shall be rendered within ten (10) days from date the hearing is completed."

No request was made by the Claimant for a hearing within the time specified in the above rule.

As this is a discipline case, and was not handled in accordance with Rule 18(b) of the applicable Agreement, the Board has no alternative but to dismiss the claim.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauloz
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.

