

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23255  
Docket Number MW-23416

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 V. S. Sinclair was without just and sufficient cause and wholly disproportionate to the charge leveled against him (System File 37-SCL-79-83/12-39(79-34) J).

(2) Trackman V. S. Sinclair shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant had been in Carrier's service about two and one-half years. At the time of the occurrence giving rise to the dispute herein, he was employed as a trackman with headquarters at Carrier's Uceta Yard, under the supervision of Roadmaster Carpenter and Apprentice Foreman Rolle.

On May 8, 1979, the Uceta Yard area was engulfed in a rain storm during which, it is said, as much as twelve inches of rain fell in the area. As a result, there was much track under water, and the Carrier advises a car was derailed. The Carrier contends that a bona fide emergency situation existed; the services of all employees were crucial, and the Roadmaster notified the foremen of employees under his jurisdiction that no one would be allowed to leave their jobs until he was able to determine the condition of the railroad and the weather conditions.

The gang to which claimant was assigned was left in charge of the Apprentice Foreman as it was necessary for the regular Foreman of the gang to go on the main line and inspect track. About 2:30 PM the Claimant announced to the Apprentice Foreman that he was going home because he was wet. He was told that he could not go home because of the emergency situation and his services were needed.

According to the Carrier, the claimant persisted in his determination to leave the job and was repeatedly told that he could not go home.

When the claimant finally made the statement to the Apprentice Foreman that he was going home (although he did not have permission to do so) the Apprentice Foreman told him that before he went home, he should go to the Roadmaster's office. The claimant went to the Roadmaster's office, however, the Roadmaster was not available as he was out checking the condition of the tracks and yards. Claimant then apparently went home without permission from anyone.

Claimant was charged with desertion, insubordination and absence without permission. A formal investigation was conducted on May 22, 1979. A review of the transcript, copy of which has been made a part of the record, shows that the investigation was conducted in a fair and impartial manner. None of claimant's substantive procedural rights was violated. There was substantial evidence adduced at the investigation to support the charges against claimant. Also the claimant's prior work record, which was made a part of the dispute in the handling on the property and is properly before the Board, was far from satisfactory. He had previously been warned on five occasions and suspended on two occasions for violation of Rule 17(b) of the Agreement, which requires that an employee desiring to be absent from service must obtain permission from his foreman or the proper officer.

Claimant's actions in the present case, coupled with his prior record, fully warranted his dismissal from service.

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

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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 15th day of April 1981.