

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23268  
Docket Number MW-23407

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(St. Louis-San Francisco Railway Company

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

(1) The discipline assessed Trackman J. C. Johnson for alleged violation of Rule 189 was without just and sufficient cause and wholly disproportionate to such charge (System File B-1838).

(2) Trackman J. C. Johnson shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed for being absent without authority on April 23, 1979. Claimant objects to his work history being taken into consideration by the Carrier in deciding to dismiss him. The work history was made part of the record, over the objection of the claimant, in the formal investigation which was held on May 29, 1979.

Claimant was subsequently restored to service on August 1, 1979 without pay for the time lost and without prejudice to the claimant's right to pursue this claim for time lost.

The Carrier may take into consideration the claimant's work history which may demonstrate a pattern of behavior upon which the Carrier may judge the incident in question.

We find that the work history of the claimant as well as the circumstances of the day of dismissal justify the dismissal of the employe by the Carrier.

On the day of dismissal, the claimant who was employed as a track man was part of a gang which lived in a bunk car. A bus takes the employes to the work site each morning. He was awakened three times in time to catch the bus. The third time he said he did not want to mess with it and went back to sleep. The claimant had returned to the bunk car at 5:30 A.M. after partying at a place about 145 miles from the bunk car.

Two days before, the claimant had missed work because he claimed he was too sick to work.

A review of his work history reveals that he entered the service April 20, 1978. He was out of service from November 9, 1978 to March 1, 1979 because of unauthorized absence from the gang.

Since his return to service in March, he has continually missed time. The Carrier has been cooperative and accepted the excuses proffered by the claimant when he has claimed to be sick. He was granted vacation time when he hurt his finger and requested the time off. The Carrier authorized further time off when he claimed he didn't have the money to return from his home to the job site.

It is obvious from a review of the record that the claimant has demonstrated little regard for his responsibilities to his employment.

The Organization has done a noble job in attempting to justify each absence separately, but to hold that the Carrier's cooperative posture should cloud an obvious pattern of absenteeism is not justified.

The claimant's statement that he overslept and didn't have time to get dressed, when in fact he was awakened on three occasions with time to get dressed, is obviously untrue. The Carrier was justified in its dismissal action.

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

Award Number 23268  
Docket Number MW-23407

Page 3

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.