

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23360
Docket Number MW-23226

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri Pacific Railroad Company

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

(1) The discipline assessed Trackman P. J. Berry for allegedly 'absenting yourself from your position as Trackman on System Rail Gang 6020 without permission' was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File S 310-258).

(2) Trackman P. J. Berry shall be afforded the remedy prescribed in Rule 12, Section 1 (e)."

OPINION OF BOARD: The Claimant, Paul J. Berry, was employed as a Trackman by the Missouri Pacific Railroad Company for about three years when given notice on August 10, 1978 of an investigation "in connection with your failure to follow (Foreman's) instructions...on August 3, 1978 and August 9, 1978 by absenting yourself from your position as Trackman on System Rail Gang 6020 without permission". An investigation was held on September 11, 1978 and Claimant was informed of his dismissal by the Carrier on September 12, 1978.

There was no evidence given by the Foreman at the investigation concerning the events of August 3, 1978, and these played no further role in the disciplinary process. An examination of the record at the hearing establishes that Claimant left his job on August 9, 1978 contrary to the instructions of supervision for notification. There was substantial evidence to sustain the Carrier's decision to discipline Claimant. Mr. Berry was twice offered reinstatement by the Carrier - on July 9 and again on July 24, 1979 - but he did not report to work. In view of his failure to avail himself of these two opportunities his termination is upheld.

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. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.

