

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23586
Docket Number MW-23496

A. Robert Lowry, 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 E. C. Gibson was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File C-4(13) -ECG/12-39(79-31) J)

(2) Trackman E. C. Gibson shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant E. C. Gibson, employed as trackman by the Carrier, with $4\frac{1}{2}$ years service, was regularly assigned to Section Force 8106, headquartered at Cuthbert, Georgia. Claimant was absent from work on January 24, 1979, and was instructed to report to the Roadmaster's office on January 27, 1979, which he did and was instructed to acknowledge understanding of a letter he was handed by signing his name to a place provided thereon. The letter, dated January 27, 1979, reads as follows:

"On Jan. 24, 1979, you were absent from your position as trackman on section 8106, Cuthbert, Ga., without permission from your foreman or proper officer and have neither furnished an acceptable excuse."

"You are familiar with paragraph 17B of your current working agreement which has been discussed with you and quoted to you on numerous occasions, which states an employee desiring to be absent from service must obtain permission from his foreman or proper officer. In case an employee is unavoidably kept from work he must be able to furnish proof of his inability to notify his foreman or proper officer."

"This letter will serve to caution you of your violation of paragraph 17B and a copy will be placed on your personal record file."

Claimant refused to sign the letter after two requests by the Roadmaster. On January 29, 1979, Claimant was removed from service and charged with insubordination. He was ordered to report for a hearing on February 6, 1979. After the hearing which was held as scheduled, Claimant was dismissed from service. A copy of the transcript of the hearing was made a part of the record, a review of which shows that none of Claimant's substantive procedural rights was violated.

Claimant contended he did not sign the letter in question because he understood from a previous similar experience that he would be removed from service if he received another letter of caution such as the one he refused to sign.

While on the surface dismissal seems to be extremely harsh penalty for merely refusing to sign a letter of caution, however, in determining the degree of punishment to fit the crime it has been the history of this Board to give considerable weight to the employee's personal record. This employee's record clearly justifies Carrier's decision of permanent dismissal. In his four and one half years of service with this Carrier Claimant was absent without proper authority on five occasions, a total of 13 days, was arrested and found guilty of assault on a female, found guilty and jailed for failure to provide child support. He had received numerous letters of caution and as a result of a hearing he received a reprimanding letter. The record clearly shows Carrier has been extremely lenient towards this employee and gave him many opportunities to bring his conduct within compliance with Carrier's rules, but this incident proved to be the last straw that broke the camel's back. The Board will not disturb the discipline assessed.

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: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.