

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23956
Docket Number MW-23802

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railroad Company

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

(1) The dismissal of Track Walker L. L. Valdez was capricious and without just and sufficient cause. (System File D-35-79/MW-29-79)

(2) Track Walker L. L. Valdez shall be reinstated with seniority, vacation and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant L. L. Valdez, a Track Walker, was served with a notice of investigation "to develop facts and place responsibility, if any, in connection with (Claimant's) absenting himself from duty as section laborer without permission at about 8:30 AM, July 3, 1979." The investigation was held on July 6, 1979 and on July 16, 1979 Claimant was dismissed from service by the Superintendent.

An examination of the record by the Board establishes that Claimant, shortly after his shift began on July 3, 1979, left the Carrier's property and went home for a substantial period of time without permission. He returned to work that day only after Carrier's personnel went to his house to investigate and found Claimant home.

There was substantial evidence in the record to sustain Carrier's determination to discipline Claimant. Claimant's record shows that he absented himself from duty without proper authorization on two occasions in 1976, and that in April of 1978 he was dismissed for the same type of offense only to be reinstated on a leniency basis some four months later. The July 3, 1979 incident took place less than a full year after. Then and now leniency is solely within the authority of the Carrier. Under these circumstances termination was reasonable.

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 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 30th day of July 1982.

