NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23979
THIRD DIVISION Docket Number MW-24036

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(New Orleans Public Belt Railroad

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

(1) The dismissal of Track Laborer Wilfred John, Jr. for alleged 'insubordination to Track Supervisor, George W. Stoulig, Jr., on Tuesday, March 25, 1980' was arbitrary, unwarranted and without just and sufficient cause (Carrier's File 013.7).

(2) Track Laborer Wilfred John, Jr. shall now be allowed the benefits prescribed in Agreement Rule 16(f)."

OPINION OF BOARD: On Tuesday, March 25, 1980, a dispute occurred between Trackman Wilfred John, Jr. and Foreman N. J. Guidry and Track Supervisor George Stoulig. Foreman Guidry instructed Wilfred John that he was disciplined five (5) days for not notifying his Foreman of his absence for the period of February 22, 1980 to March 22, 1980. Trackman W. John told Foreman Guidry that, "I ain't gonna call shit". When Track Supervisor Stoulig instructed W. John to notify his Foreman when he would be absent, Mr. John's reply was "might". Again Supervisor Stoulig instructed Trackman W. John to call his Foreman when he was laid off and Trackman John's reply was, "you ain't gonna tell me nothing". At this time, Track Supervisor Stoulig instructed Foreman Guidry to write up his time and dismiss Trackman John from the employ of the N.O.P.B.

Trackman John was notified by letter dated March 27, 1980 that he was dismissed for insubordination and failure to notify Foreman Guidry that he was sick and unable to perform his duties. A hearing was held on April 22, 1980 and Trackman John was found guilty of insubordination. The Brotherhood of Maintenance of Way Employes did not accept the decision of dismissal and appealed same to Mr. D. J. Mathews, Manager of Labor Relations. The appeal of Trackman John was denied based on the insubordination comment along with Trackman John's service record. The Claimant stated that prior to February 22, 1980 he sustained an off-duty injury making it necessary for him to be absent from work until March 25, 1980. Trackman John stated that he attempted to contact Foreman Guidry on February 25, 1980 in regard to his absence and could not contact him at that time. Trackman John testified as follows:

"Q: On what dates did you speak to Mr. Guidry?

A: I don't know the exact dates, but-uh- for one, the 25th.

Q: Of February?

A: Of February, right. That's the month."

The Claimant then contacted the claims agent and informed him of his (claimant) circumstances. Trackman John further testified that he had talked to Foreman Guidry about three or four times while he was off. The Claimant maintains that Foreman Guidry and the Manager of Claims and Labor Relations had knowledge of Mr. John's absences and the reason for such.

With regard to the alleged charge of insubordination, the Claimant maintains that he was provoked into making comments of, "I ain't gonna notify shit" and, "I might," in regards to notifying his Foreman about absenteeism. Claimant further states that these comments were made in anger after Foreman Guidry said, "I want to give that SOB his time," and after being informed he was suspended for alleged failure to notify Foreman Guidry of his absences. Claimant denies he failed to notify Foreman Guidry.

Claimant further maintains that Foreman Guidry testified that he did not remember certain events involving the Claimant and at other times presented conflicting testimony and therefore Foreman Guidry's testimony should be disregarded (Award Nos. 1988, 7656, 1437).

The Carrier maintains that Trackman John did not notify Foreman Guidry on February 25, 1980 that he was off. Foreman Guidry testified as follows:

> "Q: This would be-uh-and he stated for the record that somewhere around the middle of March, he had a conversation with you concerning him being off. Would that have been the time he called you at night?
>
> A: Yeah. I guess it could have been the. I don't remember the exact date that he called. But I know, like I say, it was at least about three weeks that he was off before I heard from him, before he called me."

Foreman Guidry further testified that the Claimant was aware of the Company's procedure that employes must notify their foreman when they are off and offer reasons for such absence.

Trackman John had signed a notice posted by Mr. Guidry that unauthorized absences would not be tolerated.

Further, Trackman John was disciplined twice during his employment of three (3) years and eight (8) months, for unauthorized absences. The Carrier maintains that it is not uncommon for the Board to deny claims when Carrier considers employe's whole service record in determining the measure of discipline (Award No. 20263) Third Division. Further, the Board has held that unauthorized absence from duty is considered a serious offense subject to dismissal (Award Nos. 19696, 22320, 22460).

In regard to the alleged charge of insubordination, the Carrier pointed out that Trackman John admits the comments of, "I ain't gonna call shit" to Foreman Guidry and, "you ain't gonna tell me nothin", to Track Supervisor Stoulig.

Upon careful consideration of the record herein the Board finds that Claimant received a fair and impartial hearing. The charge was supported by substantial evidence on the record and, in the circumstances, the discipline assessed was not premised on caprice or unreasonableness.

The Board also notes that this is Claimant's second disciplinary action in three (3) years. In these circumstances the claim is denied.

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 27th day of August 1982.