NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23983
THIRD DIVISION Docket Number MW-24059

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

(1) The dismissal of Trackman L. Rooks for alleged insubordination and allegedly leaving the property without permission was without just and sufficient cause and wholly disproportionate to such charges (System Docket LV-103).

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

OPINION OF BOARD: This is a discipline case wherein Claimant L. Rooks was discharged from his position at the Carrier's Oak Island, New Jersey facilities. Claimant L. Rooks entered the service of the Carrier on June 26, 1978, as a Trackman at Oak Island, New Jersey. Claimant was working under the supervision of Foreman L. Hardin and Supervisor of Production H. Fox when the incident involved here occurred.

At approximately 8:00 AM on September 26, 1978, Claimant told his supervisor he wanted to leave the job because of personal business, at which time he was given a direct order that he could not leave. Claimant returned to his job and at approximately 11:00 AM the Supervisor learned that Claimant had left the job without permission.

As a result of this act, the Claimant was notified to attend a hearing and investigation on October 13, 1978, in connection with the following charge:

> "Alleged violation of leaving job without permission. Alleged insubordination in that you disregarded an order given to you from Mr. Fox not to leave the job."

The Claimant was subsequently issued a Notice of Discipline, dated October 19, 1978, in which he was advised that he was "dismissed in all capacities" for the offenses outlined in the above-cited charge.

Claimant appealed the disciplinary action up to and including the Senior Director Labor Relations. By letter dated March 27, 1979, the Senior Director Labor Relations denied Claimant's appeal.

The Carrier asserts that Claimant's guilt as charged is established in the transcript by the testimony of H. Fox, Supervisor of Production and Claimant's admission of guilt. The relevant testimony of Supervisor Fox is set forth, in part, below:

> "At approximately 8:00 AM in the morning Mr. Rooks came up to me and told me that he had personal business and he wanted to leave. At that time I gave Mr. Rooks a direct order that he could not leave the property. At no time did he tell me about the fire in his apartment. He did return to the job at the East bound receiving yard.
>
> At that time I left to check on some more production units. At approximately 11:00 a.m. I was informed that Mr. Rooks left the job without permission violating the order that I had given him. At that time I informed the Supervisor, Dale Malchitsky, to take Rooks out of service and bring charges of alleged violation of leaving the job without permission, insubordination to me and that's all that I know about that."

The Claimant testified concerning this incident as follows:

> "Q: What happened?
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> A: Well, the day before my house got caught on fire and I called the guy where I was to get another apartment and I had told him I was going to be there at 12:00 the next day, but the only mistake I made is that I didn't tell him in the morning, I told him about 9:30 and when I told him, the foreman told me to go and see the Supervisor and I went to the Supervisor and I told him about it which was Mr. Fox, and when I told him he said I couldn't leave, but the only way I knew that I would be able to get the apartment was to leave at that point, you know, because I didn't know another alternative.
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> Hearing Officer: Mr. Rooks, you're charged with alleged violation of leaving the job without permission. Did you leave without permission?
>
> A: Yes.
>
> Q: Mr. Rooks, you're charged with insubordination in that you disregarded an order given to you by Mr. Fox, not to leave the job. Did you disregard the order given to you by Mr. Fox?
>
> A: Yes.

"Q: Did you tell Lee Hardin of the fire in your apartment?

A: No.

Q: Did you tell Mr. Fox when you spoke to him about authorization to leave the job?

A: Well, I told him I wanted authorization, but I didn't explain it to him.

Q: You didn't explain what the reason was?

A: No.

Q: After you had spoken to Mr. Fox did you go back to Mr. Hardin, the foreman, and ask his permission to leave?

A: No."

The Organization maintains that the dismissal of the Claimant was done without consideration whatsoever to the mitigating circumstances namely the destruction of the Claimant's apartment by fire. The Organization also maintains that the decision of dismissal under the circumstances was excessively harsh and wholly disproportionate in relation to the charges placed against the Claimant. Third Division Awards 19037, 19569 and 22113.

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. Specifically the Claimant admitted to (1) not obeying Supervisor Fox's orders and (2) not advising Supervisor Fox that his apartment was destroyed by fire. Under these circumstances the dismissal of Claimant was appropriate and not unreasonable. The Board also notes that Claimant is a short time employe with approximately three (3) months of service. In these circumstances the Board has no alternative but to deny the claim.

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.