

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24075  
Docket Number MW-24021

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Seaboard Coast Line Railroad Company

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

(1) The Carrier, without just and sufficient cause and on the basis of unproven and disproven charges, improperly disciplined and dismissed Mr. J. C. VanCamp on charges that

- (a) he was allegedly absent from his assignment without permission on July 27, 1979 (System File C-4(13)-JCV/12-39(80-2) H);
- (b) he was allegedly absent without permission and insubordinate on August 26, 1979 (System File C-4(13)-JCV/12-39(80-1) J);
- (c) he allegedly failed to report for work on September 4, 1979, was allegedly late for work on September 8 and 9, 1979 and was allegedly insubordinate on September 9, 1979 (System File C-4(13)-JCV/12-39(80-11) H).

(2) The claimant's personal record be cleared of the charges; he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On July 27, the claimant was directed to attend an investigation regarding his alleged absence from work without permission on July 27. The hearing was scheduled and held on August 21, 1979. On September 5, the claimant was given a 15-day suspension to be served September 22 through October 6, 1979. On August 28, the claimant was directed to attend an investigation regarding his alleged absences without permission on August 26, 1979. The investigation was scheduled and held September 11, 1979. On September 20, 1979, he was assessed a sixty day suspension.

September 12, the claimant was directed to attend an investigation regarding his alleged absence without permission on September 4, his tardiness on September 8, 9 and alleged insubordination on September 9. The hearing was scheduled and held on October 11, 1979. On October 22, the claimant was dismissed.

Reviewing the record and the series of disciplinary offenses as a whole, it is the Board's conclusion that there is substantial evidence to support the dismissal of the claimant. The record details a continual and incorrigible indifference, on the claimant's part, to his employment

responsibilities. Even after disciplinary action had been initiated and effected, the claimant persisted in his pattern of absences and tardiness.

The first incident of absenteeism occurred July 27. The Claimant was absent from his assignment; the carrier did not hear from him until 10:40 a.m. when he called and advised that he had car trouble. At the investigation claimant presented what he contended was a receipt for parts he purchased to repair his car. The carrier did not find this credible because of the nature of the receipt; it did not indicate that it was for auto parts or from an auto parts store or give any other indication exactly what it was a receipt for. The carrier also did not find the claimant's defense credible or excusable because there had been seven absences in the prior two years for which he had used car trouble as an excuse. Moreover, he had been counseled numerous times about his responsibility to report to work. It is the opinion of the Board that in respect to this portion of the charge, there is substantial evidence to support the carrier's conclusion.

The second incident involved the claimant's failure to report to work on Sunday, August 26, 1979. The evidence is convincing that he failed to comply with clear instructions to report for duty on the day in question. He was told on August 25 by his foreman to report to work the next day. The claimant, later that day called the foreman and indicated that he would not be there and the phone connection was lost before the foreman could reply. The foreman, however, contacted the claimant early Sunday morning and instructed the claimant again to report to work and he did not.

The third set of actions which lead to the claimant's dismissal occurred on September 4, 8, and 9. The evidence in respect to these charges is also convincing. September 4 he was absent without permission. On September 8 and 9 he was late. The record is also clear that at 1:00 p.m. on September 9, the claimant left work without permission contrary to the clear and direct instructions of the foreman to remain on duty. This act of insubordination is particularly serious when coupled with his poor attendance record.

In view of the convincing nature of the evidence, the recurring nature of the absence problem, and the seriousness of the insubordination, it is the Board's conclusion that dismissal in this case is appropriate.

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 Employee involved in this dispute are respectively Carrier and Employee 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 14th day of December 1982.