

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24370
Docket Number MW-24429

Edward M. Hogan, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Detroit, Toledo and Ironton Railroad Company

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

(1) The discipline of Trackman S. Landers, Jr. for failing 'to protect and report for work on December 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14, 1979' was without just and sufficient cause.

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, who had been under medical care for a work related injury to his hand, was released from medical care by his physician and permitted to commence work on December 3, 1979. Claimant failed to report for work on that date. However, information developed at the later formal investigation indicated that Claimant did phone the Carrier on November 30, 1979 and was informed by unknown personnel that he had been "laid off".

On January 14, 1980, the Carrier sent the Claimant a letter stating that because Claimant had not reported to work, the Carrier was "assuming" that Claimant had "found employment elsewhere". However, this letter also gave the Claimant ten (10) days (until January 24, 1980) in which to report to the Carrier to contradict the "assumption" of the Carrier. This letter was returned to the Carrier indicating that the Claimant had left with no forwarding address. The Organization subsequently provided the Carrier with the Claimant's new address. (The Claimant had moved during this period.)

An investigation was held on May 23, 1980, in an effort by the Carrier to develop the facts relating to Claimant's failure to report to duty for the period December 3, 1979 through December 14, 1979. (Claimant would have been subject to reduction in force rules.) As indicated before, information developed at the hearing indicated that the Claimant had phoned the Carrier, although the Claimant did not recall the name of the individual he had spoken to on November 30, 1979.

On May 28, 1980, the Carrier notified the Claimant that the evidence adduced at the hearing supported their original "assumption" that the Claimant had "quit the railroad", and that the record would "stand as unrefuted".

In a letter dated January 6, 1981, the Carrier reiterated their position in this dispute. Further, the Carrier offered to restore the Claimant to service with full seniority rights unimpaired, but without compensation for any time the Claimant was off. Claimant, for reasons best known to him, rejected Carrier's officer.

Based upon our review of the complete record in this case, it is our determination that Claimant be again offered one last opportunity to return to service with seniority unimpaired but without compensation for time lost subject to the same terms and conditions which were outlined in Carrier's January 6, 1981 letter. If Claimant fails to avail himself of this opportunity, the claim as outlined herein 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 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 disposed of in accordance with the Opinion.

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 13th day of May 1983.

