

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24609
Docket Number MW-24893

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern
((Former C&S Railway Company)

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

(1) The dismissal of Trackman A. G. Pedraza for allegedly "being absent from duty without the proper authority on December 7 and 8, 1981" was without just and sufficient cause and in violation of the Agreement (System File C-6-82/G-90).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Prior to his dismissal, the Claimant, with about two and one-half years of service, was employed by the Carrier as a trackman, assigned to the Section Gang headquartered at Trinchere, Colorado, under the supervision of foreman H. M. Horner.

Claimant maintained his residence at Aguilar, Colorado, some forty miles from Trinchere, and depended upon his personal automobile for transportation between his home and work location. The contention is made that while enroute to work on December 7, 1981, Claimant's automobile became inoperative. He claims to have gotten his automobile repaired on December 8 and reported for work on December 9, 1981, when he was allegedly removed from service by the foreman.

On December 10, 1981, Claimant was charged:

"Attend investigation in the Trainmaster's Office, 720 Linden Avenue, Trinidad, Colorado, at 9:00 a.m., December 14, 1981, for the purpose of ascertaining the facts and determining responsibility in connection with your alleged absence from duty without the proper authority on December 7 and 8, 1981, when assigned as a trackman to the Trinchere Section. Arrange for representative and/or witnesses, if desired, in accordance with governing provisions of prevailing schedule rules.

Please acknowledge receipt by affixing your signature in the space provided on copy of this letter."

The letter of charge, quoted above, was sent to Claimant at his last known address by certified mail, with a copy going to the General Chairman. Neither the Claimant nor his representative was present at the investigation, which was conducted "in absentia," at the time and place scheduled. In the investigation the foreman testified that Claimant did not contact him on December 7 or December 8, 1981, nor did anyone contact him in Claimant's behalf. There is no showing that Claimant actually attempted to contact the foreman or any officer of the Carrier on December 7 or 8, 1981.

In the handling of the dispute on the property, the Carrier furnished a copy of the receipt for the letter of charge sent to Claimant on December 10, 1981, which shows delivery of the letter on December 11, 1981. The Carrier did everything that could reasonably be expected of it to notify Claimant of the charge and the time and place of the investigation. Claimant's failure to appear at the investigation, or to request a postponement, was at his peril. The suspension of Claimant from service pending an investigation was not in violation of the Agreement.

Carrier's Safety Rule No. 570 reads:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

Claimant's prior record was far from satisfactory. In his relatively short period of employment, two and one-half years, he had previously been dismissed from the service and reinstated on a leniency basis. There is no sound basis for the Board to interfere with the discipline imposed by the Carrier.

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 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.

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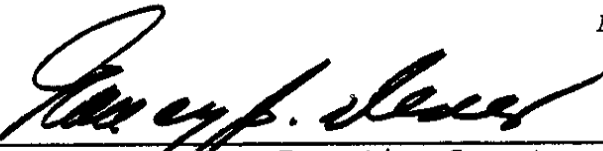
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.