

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24635  
Docket Number MW-24769

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Missouri Pacific Railroad Company

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

(1) The dismissal of Trackman Aubrey Crayton for alleged "failure to comply with the provisions of Item No. 5 of Conditions of Employment found on form 15021, Application For Employment" on April 29, 1981 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File § 310-408).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered including holiday pay.

OPINION OF BOARD: Claimant had been in Carrier's service as a trackman about three years. He was assigned to work on Carrier's Gang 5658 at Longview, Texas, with assigned starting time of 7:00 A.M. On April 29, 1981, he was charged:

"Report to Trainmaster's Office, Longview, Texas at 9:00 a.m., Monday, May 11, 1981, for formal investigation to develop the facts and place responsibility, if any, in connection with your failure to report for duty at the appointed time, reporting some 2 hours after starting time, on Wednesday, April 29, 1981 while assigned to gang 5658 at Longview, Texas.

Arrange attendance of witnesses and/or accredited representatives of your choice, if any are desired as provided by applicable schedule of agreements."

The investigation was conducted as scheduled and on May 12, 1981, Claimant was dismissed from service. A copy of the transcript of the investigation has been made a part of the record. Claimant was present throughout the investigation and was represented.

In its submission to the Board the Organization contends that the letter of charge against Claimant was not precise as required by Rule 12, Section 1(b) of the Agreement. It is well settled that if exceptions are to be taken to a letter of charge, such exceptions must be taken prior to or during the course of the investigation; otherwise, they are deemed waived. Further, the Carrier points out that no such contention was made in the handling of the dispute on the property. It is also well settled that issues and defenses not raised on the property may not be raised for the first time before the Board. The same principle applies to the contention of the Organization, raised for the first time before the Board, concerning the letter of dismissal. Not having been raised in the on-property handling, such issue may not be raised for the first time before the Board.

As to the merits of the dispute, it was established in the investigation that Claimant did not report for duty until 9:00 A.M. on April 29, 1981, and that he did not advise any supervisory personnel that he would be late.

The record also shows that Claimant had been disciplined on four prior occasions for being absent without authority, with discipline ranging from 15 days deferred suspension to 90 days actual suspension. The offense here involved, coupled with his prior record, fully warranted the discipline imposed.

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

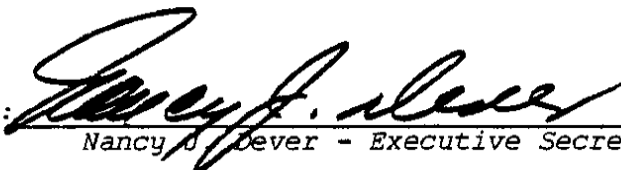
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984