

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24638
Docket Number MW-24848

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) the Agreement was violated when the Carrier failed to schedule and hold an investigation which was timely and properly requested in conformance with Appendix "O" and Rule 28(a) (System File D-15-81/MW-19-81).

(2) As a consequence of the aforesaid violation, Claimant D. A. Hall shall be reinstated with seniority vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered, including overtime and holiday pay, beginning March 2, 1981.

OPINION OF BOARD: Claimant had been in Carrier's service as a section laborer about five months and was regularly assigned to the East Portal section. Subsequent to his reporting for duty on March 2, 1981, an incident occurred between Claimant and the Assistant Foreman involving the Claimant going to the tool house to obtain a tool necessary for the section gang's work that day. After considerable delay, the Assistant Foreman, apparently perturbed, made the statement to Claimant "If you can't handle your job, then get the f... out of here." Claimant then walked off the job.

On March 20, 1981, Carrier's Division Engineer notified the General Chairman:

"This is to advise that the following two men have been dropped from the service and seniority roster of the Denver and Rio Grande Western R.R. Company per Rule 28 Appendix 'O' of the current agreement.

.....

D. A. Hall, PR #150649 walked off the job at East Portal on 3-2-81 and never returned."

On April 1, 1981, the General Chairman requested that a formal investigation be held under Appendix "O" of the Agreement, which request was denied.

We do not consider the Assistant Foreman's remarks to the Claimant on March 2, 1981, as constituting a dismissal. See Award No. 22763. We agree with the Carrier that Claimant's walking off the job and remaining off the job was of his own volition.

Appendix "O" of the applicable collective bargaining Agreement provides in part:

"It is understood and agreed that an investigation will not be necessary when an employe absents himself from his assignment, without permission, for ten working days or more. Such employe may be dropped at the end of ten working days and the General Chairman will be notified of such action and the reason therefor."

In our Award No. 23288, involving the same parties, we held the above-quoted portion of Appendix "O" to be self-executing and that no investigation is required when it is effective. We reiterate that holding. The actions of Claimant did not come within that portion of Appendix "O" reading:

"In cases where an employe has been unable to notify his supervisor that he would be unable to report for work because of personal illness or other justifiable cause, such employe may within thirty calendar days from the first day of his unauthorized absence make written request to the proper Carrier officer for a formal investigation."

Based upon the record before us, we do not find any violation of the Agreement 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 Employes involved in this dispute are respectively Carrier and Employe 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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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dover - Executive Secretary

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