

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24729
Docket Number MW-25027

Paul C. Carter, 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 dismissal of Trackman R. Coleman, Jr. effective September 18, 1981 for alleged violation of Agreement Rule 17(b) on August 4, 5 and 6, 1981 was excessive and without just and sufficient cause (System File 37-SCL-81-24/12-39 (81-1035) K3).

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

OPINION OF BOARD: Claimant was employed as a trackman, had been in Carrier's service about seven years, and was assigned to T&S Force 5665, which worked four ten-hour days per week. He was working under the jurisdiction of Foreman W. Bruce, Jr.

On August 11, 1981, Carrier's Roadmaster wrote claimant:

"As a result of your failure to report to your assigned duties on August 4, 5 and 6, you are hereby charged with violation of Rule 17, Paragraph (b) of the current working agreement between the Seaboard Coast Line Railroad Company and its Maintenance of Way Employes which reads as follows:

'An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer.'

In this connection, you will be granted a hearing in accordance with the current working agreement by Division Engineer R. E. Cooper or his duly authorized representative and you will hear from him in this connection."

Hearing was subsequently scheduled and held on August 20, 1981. A copy of the transcript of the hearing has been made a part of the record. The hearing was conducted in a fair and impartial manner and none of claimant's substantive procedural rights was violated. Following the investigation, claimant was notified on September 9, 1981, of his dismissal from service.

The record shows that the claimant was absent on August 3, 4, 5 and 6, 1981, without calling anyone in authority to report his absence, or reason therefor. A statement was furnished to the foreman, apparently on August 4, 1981, from

claimant's doctor that claimant was out of service on August 3 because of illness. It will be noted that August 3 was not included in the dates listed in letter of charge of August 11, 1981.

In the investigation the foreman testified that the claimant did not request his permission to be off on August 4, 5 and 6, nor did he receive any notice from claimant that he would be off on those dates. The Roadmaster testified that he received no notice from claimant between August 4 and 5, 1981 that he desired to be absent, that when claimant returned to work on August 10 he stated that the reason for his absence was because of sickness in his family, that he questioned claimant if he tried to notify anyone in authority and the claimant said he had not. The claimant stated in the investigation that he did not ask permission or have permission to be absent. The record shows, however, that on August 19, 1981, the Roadmaster received the following from claimant's physician:

"Mr. Richard Coleman, Jr. has been under my care from 8/3/81 to 8/7/81 and is able to return to work on 8/10/81.

Remarks-Richard Coleman's wife and children were sick and he was the only person to see about them."

From the record, it appears that claimant had good reasons for his absences on August 3, 4, 5 and 6, 1981. However, the doctor's certificate did not relieve claimant of his responsibility to obtain permission from or notify his foreman the reason for his absence on August 4, 5 and 6. He was subject to discipline for this reason. The Carrier relies upon claimant's prior absentee record to support the discipline of dismissal. In this connection, our attention has been called to Second Division Award No. 8871 (Referee Quinn) wherein it was held:

"Dismissal, of course, is the strongest sanction which the Carrier can apply to any employee. The severity of the discipline in this case makes it clear that the Carrier reached beyond the charges brought against Claimant as grounds for its Action. While it is true that an employee's employment record may be taken into account by the Carrier in determining the degree of discipline to be administered, the principle is not meant to grant the Carrier license to dismiss for a rule infraction not warranting dismissal in its own right. The point is well stated in Award No. 7705 in which the Second Division (Referee Franden) stated in regard to a charge of failure to protect assignment.

'Dismissal is the ultimate penalty which is reserved for the more serious offenses. Its application in the instant case is not warranted. It is obvious that the claimant's unenviable record was a major factor in assessing the dismissal penalty. While it is proper to consider an employee's past record, the facts of the instant case do not support dismissal.'"

Based upon the record in the present dispute, we consider permanent dismissal excessive. We simply cannot support the permanent dismissal of an employee which was triggered by his absence from work for a few days by sickness in his family. Each discipline case must stand on its own facts. To support permanent

dismissal in this case would carry literalism to the extreme. We will award that claimant be promptly restored to service with seniority and other rights unimpaired, but without pay for time lost while out of the service.

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

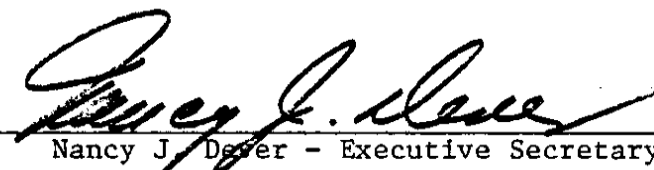
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.