

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24798
Docket Number MW-24910

Eckehard Muessig, 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 Peter Grant for alleged violation of Agreement Rule 17 was without just and sufficient cause and on the basis of unproven charges (System File C-4(13)-PG/12-39(81-43) G).

(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: The Claimant was charged with violation of two of the Carrier's rules relating to absences and safety. Following an investigation, the Carrier found that the Claimant had failed to properly protect his assignment, a violation of Rule 17 of the agreement. Evidence developed during the investigation failed to support a violation of safety rules.

Having found a rule violation, the Carrier considered the Claimant's prior record, which included a reinstatement on a leniency basis, which had been granted on the understanding that, if the Claimant was to remain in the service of the Carrier, he was to perform his duties in a satisfactory manner and comply with all of the Carrier's rules and regulations.

The foundation of the Organization's forceful argument is based on the contention that the Carrier was aware of the reasons for the Claimant's absence and since the cause of the absences was unavoidable, it maintains that the Carrier failed to meet its burden of proof with respect to a Rule 17 violation.

The Board finds the Carrier's conclusion of a Rule 17 violation not an unreasonable one, under the facts and circumstances of record. Accordingly, given this finding, the Carrier's determination that the Claimant's work record, which included a suspension and four letters of caution following his leniency reinstatement, was not satisfactory, is supported by the record. Accordingly, given the prior record, the Carrier's action in the instant case is not excessive.

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

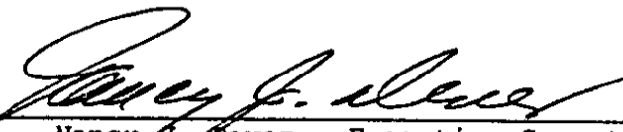
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

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

