

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24802
Docket Number MW-24963

Eckehard Meussig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier improperly terminated its employment of Sectionman J. Yazzie, Jr. (System File 4-14-11-14-55).

(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: The issue in this dispute arises from the Claimant's absence from his work place from August 31 through September 4, 1981. The Carrier contends that this absence was a voluntary act and resulted in the forfeiture of the Claimant's seniority rights and employment relationship pursuant to its Rule 48(k).

For its part, the Organization maintains that the Claimant was under the impression that he had been dismissed and, therefore, he was not responsible for his absence. Essentially, the Organization then maintains that the Carrier's actions improperly served to circumvent the employee protection provisions of the agreement to which the Claimant was entitled.

The issue of whether the Claimant absented himself of his own choosing turns on a matter of credibility as to the circumstances that led to his absence. The Carrier chose to believe the statement of its Foreman and a fellow co-worker of the Claimant with respect to the events and circumstances which led to the Claimant's absences.

After a review of the record, the Board is satisfied that the Claimant was responsible for his absence. Accordingly, the determination of the Carrier will not be disturbed.

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

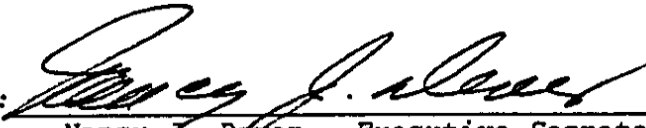
That the Agreement was not violated.

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

