

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24992  
Docket Number MW-25022

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Seaboard System Railroad (formerly Georgia Railroad)

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

(1) The dismissal of Trackman Nathan Shorter for alleged absenteeism on December 28, 29 and 30, 1981 and January 4, 1982 was without just and sufficient cause (System File 37-AWP-82-6/12-39(82-1021) 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: Prior to his dismissal by the Carrier, Claimant was employed as a trackman, working under the supervision of Surfacing Gang Foreman J. D. Stephens. He had entered the Carrier's service on October 20, 1980. On January 6, 1982, he was notified by the Division Engineer:

"It has been reported by your foreman that you have repeatedly failed to protect your job. The reason that your job exists at all is because we have enough work to justify having a person in that particular position.

Our payroll on file at the General Office Bldg., of the Georgia Railroad, shows that you have again failed to protect your job on the dates shown below:

December 28, 29 and 30, 1981, January 4, 1982.

Our records show that you have had previous warnings regarding your failure to protect the position. Therefore, due to your work record we find it necessary to advise you there will be a formal hearing held at the Georgia Railroad General Office Bldg. located 1590 Marietta Blvd., N.W., Atlanta, Georgia. This hearing will be held to determine whether you will remain in the service of the railroad or dismissed. Hearing will be held at 10:00 A.M., January 13, 1982.

You may have present at this hearing any witnesses who have pertinent information regarding same and a representative of the labor organization by your own arrangement.

Your personal record will be reviewed during the course of this hearing."

By agreement, the investigation was postponed and rescheduled for 10:00 A.M., January 20, 1982. Claimant was not present at the appointed time of 10:00 A.M., nor did he ask for further postponement of the hearing. The officials involved in the hearing decided to wait thirty minutes to see whether Claimant appeared. Claimant did not appear, but called by telephone and talked

to the Assistant Conducting Officer and the General Chairman of the Organization, but made no request that the investigation be further postponed. The investigation was, therefore, conducted in the absence of the Claimant. The Board has issued numerous awards upholding the conducting of investigations in absentia. We consider Claimant's failure to appear at the January 20, 1982 investigation, or to request a postponement, was at his peril.

There was substantial evidence presented in the investigation, a transcript of which has been made a part of the record, in support of the charge that Claimant did not protect his assignment on the dates shown in the letter of charge. It was also shown that Claimant's prior absentee record was far from satisfactory.

Based on the evidence before the Board, there is no proper basis to interfere with the discipline imposed by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Lever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.