

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25050
Docket Number SG-25143

John F. Cloney

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

System Docket 1609

On behalf of J. O. Hooper, whose dismissal by notice dated December 4, 1980 was reduced to time held out of service."

OPINION OF BOARD: Claimant J. O. Hooper, a Signalman entered the Carrier's service on March 21, 1978. On October 8, 1980 he received notice of trial to be held on October 21, 1980 in connection with a charge of "excessive time lost on the following dates: July 21, 28, August 20 and September 2, 3 and 16, 1980."

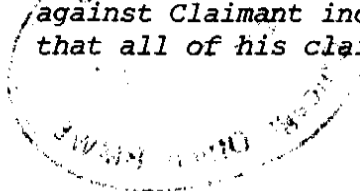
At the hearing Claimant admitted the time lost, explaining his absences as follows:

July 21 - Dental appointment
July 28 - Poison Ivy
August 20 - Flat tire
September 2 - Quit two hours early - Riding with an employee who had to leave.
September 3 - Sore back from wire lashing work on previous day.
September 16 - Absent with permission

At the hearing records were introduced over the Organization objection to establish Claimant had received a Letter of Warning dated January 25, 1980 because of absences on sixteen dates between October 1, 1979 and January 14, 1980 and had received a Notice of Discipline dated May 20, 1984 for "excessive time lost".

On December 4, 1980 Claimant was dismissed in all capacities. On January 12, 1981 Claimant was notified that "solely on a basis of leniency" the discipline was reduced to a suspension without pay for all time held out of service and Claimant was returned to service.

The Organization argues Claimant did not miss an excessive or unreasonable amount of time, that no standards have been established and that Claimant has been arbitrarily singled out. It further contends the charges against Claimant include periods for which he was authorized to be absent and that all of his claims of illness were legitimate.



The record establishes Claimant was absent on the dates alleged. Evidence of permission is limited to Claimants descriptions of calling in and asking to be reported off for a dental appointment or sore back, etc. This Board believes these incidents amounted to notification rather than permission.

We are in agreement with the Organization to the extent that we do not consider Claimant's past record material to the question of whether he was indeed absent as alleged by the charge. However, once the charged absences are established, as they were here, the past record becomes material. In the light of his record, the discipline imposed against Claimant 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 Employee involved in this dispute are respectively Carrier and Employee 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

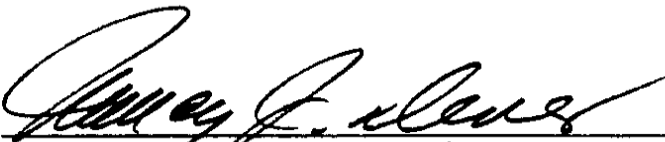
That the Agreement was not violated.

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 4th day of October 1984.

