

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25418
Docket Number MW-25504

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Port Terminal Railroad Association

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

(1) The dismissal of Laborer D. H. Hunter for alleged absence without proper authority on December 7 and 8, 1982 was without just and sufficient cause and wholly disproportionate to the charge leveled against him.

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

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a track laborer at Houston, Texas. On December 9, 1982, Claimant was notified that his services had been terminated because of his failure to protect his assignment on December 7 and 8, 1982.

On December 15, 1982, the General Chairman of the Organization requested a hearing in behalf of Claimant in accordance with the provisions of the applicable Agreement. The hearing was scheduled to be held at 9:00 A.M., January 6, 1983, in Houston. Arrangements for the hearing were made by the Carrier's Engineer Maintenance of Way and the General Chairman. Claimant did not appear at the designated time for the hearing. The hearing was recessed at 9:25 A.M., in an effort to locate Claimant, and resumed at 9:30 A.M., in Claimant's absence; however, the Local Chairman was present for the Organization and stated that he did not know the whereabouts of Claimant.

Claimant's failure to appear at the hearing at the agreed-upon time was at his peril. Many Awards of this Board have upheld discipline where the hearings were held in absentia.

Rule 111 of Carrier's Maintenance of Way Rules and Regulations provides:

"111. Employees must report for duty at the prescribed time and place, remain at their post of duty and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority."

In the hearing on January 6, 1983, the Roadmaster testified that Claimant had not notified him of his absence on December 7 and 8, 1982; that Claimant had failed to report for work on 91 days in 1982, and had been talked to numerous times about his work record.

Claimant was a short-term employee. The record shows that he had been previously cautioned about his work record, being tardy or absent, and that he had been suspended on three occasions for periods of from one to three days.

On the record before us, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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 1985.