

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25853
Docket Number MW-25381

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chicago & Illinois Midland Railway Company

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

1. The dismissal of Giuseppe Madonia for alleged absence from service without permission on August 2, 3, 4, 5, 6, 9, 10 and 11, 1982 and for alleged violation of Rule 15 - Leave of Absence - was arbitrary, capricious and unwarranted.

2. Giuseppe Madonia shall be allowed the benefits prescribed within Rule 32(i)."

OPINION OF BOARD: By letter dated September 17, 1982, the Claimant, Mr. G. Madonia was notified by the Carrier that as a result of an investigation held on August 30, 1982 and continued to September 10, 1982, at which he did not attend, it was determined that he was absent from service without permission on August 2, 3, 4, 5, 6, 9, 10, and 11 in violation of Rule 15, Leave of Absence. After concluding that the evidence showed that Mr. Madonia was responsible for violating Rule 15, the Carrier reviewed Mr. Madonia's disciplinary record and assessed the penalty of dismissal.

The record of the investigation makes clear that Mr. Madonia was in violation of Rule 15, Leave of Absence. The record is clear that Mr. Madonia did not receive permission to be off during the period of August 2, 3, 4, 5, 6, 9, 10, or 11, 1982, nor was there evidence offered from a medical doctor which would indicate that he was incapacitated or physically unable to work on the dates set forth above. The record indicates that Chief Engineer Pearson talked to Mr. Madonia on August 2, 1982 and wrote him a letter confirming the discussion as follows:

"Mr. Madonia:

Reference is made to your handwritten message informing me 'that because of my back injury and for medical reason', you would 'not be working for an indeterminate time'. I told you at the time you hand delivered your message this morning at approximately 8:45 A.M., that I could not accept this message as an excuse for not returning to work, under Rule 15 of the Agreement, and that I had information that the doctor had released you to come back to work. I asked you if you had a

note or slip from the doctor and you said you left it at home. I have since received a copy of Dr. John G. Meyer's note dated July 30, 1982 stating, 'Giuseppe Madonia was examined this date & no objective evidence of disease or injury was noted to prevent work'. Unless you have evidence in the form of a statement from a medical doctor that you are medically unfit to return to work, I must consider you as being absent without permission."

R. A. Pearson
Chief Engineer"

Evidence of record also indicates what Dr. John G. Meyer discussed with Mr. Madonia on July 30, 1982 as follows:

"Mr. Madonia was evaluated by me at your request on 30 July 1982. The results of the tests and studies accomplished remain in my office. However, in summary, I spent a long time talking with this man and telling him that he has to have some objective physical findings that can be shown before it can be demonstrated that he has difficulty in his back other than the X-ray findings. I assured him this in front of a brother-in-law who came in to listen to what was said. I explained to him again and again that for workmen's comp purposes or to explain an injury in industry one has to have objective and not subjective evidence and he does not have objective evidence. I also told him that Dr. Baisier, Dr. Kim, Dr. Trudeau and Dr. Nawoor all found no objective evidence of pain. I have also advised him that if he can find someone who can find more evidence than I have, I will be very glad to work with the man in any studies he has but right now I could find no reason why he cannot go back to work from an objective standpoint. On 7 August 1982 I discussed this matter informally with Dr. Baisier and Dr. Nawoor."

Mr. Madonia did not furnish a statement from a medical doctor indicating that he was medically unfit to return to work. And, as such, the Carrier properly determined that he was absent without permission as charged. And, the evidence of record in this case does not support the Organization's position that the Carrier acted contrary to Rule 15(b).

In determining the amount of discipline to be assessed the Carrier considered Mr. Madonia's discipline record. This record revealed that Mr. Madonia had been assessed 10 demerits for violation of Rule 15, Leave of Absence for the dates of April 5, 6, 12, 13, and 14, 1982. At that time Mr. Madonia was warned that absences of that nature would not be tolerated and any recurrence might result in more severe disciplinary action or discharge from the service of the Company. We find that the discipline of dismissal in this case is neither arbitrary, capricious nor excessive. We must deny this Claim.

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. Nevers - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.