

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The thirty (30) days of suspension imposed upon Machine Operator P. A. Posas for alleged violation of Rule M810 on September 27, 1985, was unjust and on the basis of unproven charges (System File MW-86-5/443-73-A).

(2) The dismissal of Machine Operator P. A. Posas for alleged violation of Rule 604 on November 8, 1985, was harsh, unjust and excessive (System File MW-86-17/445-56-A).

(3) The claimant's personal record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Upon reporting for work on September 27, 1985, as Machine Operator on Extra Gang 53, Claimant was told by his Foreman to report to a derailment site at East Bernard and help laborers lay track. Claimant apparently had with him a written doctor's statement returning him to service from a short medical leave of absence. According to his testimony, Claimant told the Foreman he still felt unable to perform hard physical labor but the Foreman refused to discuss the matter and again ordered him to go to the derailment site and lay track. Claimant did not report as directed but instead went home and did not work or receive compensation for that day. He was suspended effective September 28, 1985, and, following notice and investigation into the incident, Carrier restored Claimant to service on October 28, 1985, thus imposing

Form 1
Form 2

Award No. 27791
Docket No. MW-27412
89-3-86-3-653

a 30-day suspension without pay. The Organization filed a claim on December 4, 1985, seeking removal of that discipline. While the first claim was pending appeal, Claimant failed to report for work on November 8, 1985, a regularly scheduled work day. Claimant made no attempt to contact the Foreman and he did not receive proper authorization to be off work. Carrier cited him for a violation of Rule 604 and, at the hearing, Claimant admitted that he was knowledgeable of the requirements of the Rule but failed to seek authorization for his absence on November 8 because he had a history of problems with this Foreman and he had already bid off Gang 53 to work on another gang commencing November 12, 1985. Following that investigation, Carrier terminated Claimant and the present claim was filed seeking reversal of the termination. The two claims remained unresolved throughout handling on the property until appeal to this Board.

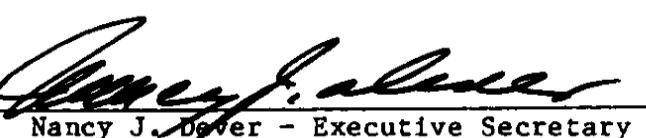
The Organization raised a number of procedural objections regarding the handling of the disciplinary action. We have reviewed the record and find these objections are not well-founded and/or they were raised *de novo* on appeal to the Board. On the merits, the record does show sufficient evidence of culpability by Claimant, although the incident of September 27, 1985, is somewhat mitigated by the cloudy medical issue. Clearly Claimant's failure to follow procedures and his border-line insubordination to his Foreman cannot be condoned. He must understand that such conduct is unacceptable and exposes him to appropriate disciplinary action, including possible discharge. In all of the circumstances, however, this Board concludes that termination in this case is excessive. Accordingly, we shall restore Claimant to service with seniority unimpaired but without backpay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.