

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 Employees
(
(The Chesapeake and Ohio Railway Company (Southern Region)

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

(1) The dismissal of Trackman S. R. Thomas for allegedly being 'absent without permission from proper authority' was on the basis of unproven charges, arbitrary and without just and sufficient cause (System File C-D-3005/MG-5385).

(2) The claimant's record shall be cleared of the charge 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.

Claimant was employed as a Trackman and received progressive discipline for absenteeism under the Discipline for Absenteeism Agreement. As of May 14, 1985, due to previous progressive discipline he was in line for termination for the next offense of unauthorized absence. The propriety of the previous disciplinary actions were not grieved and are not open to review in these proceedings.

The record indicates that Claimant was injured in an off-the-job motorcycle accident on or about May 10, 1986. He received medical treatment and eventually surgery for this injury on June 4, 1986. Claimant did not make a proper report of this injury and therefore, due to his unauthorized and unreported absences of May 10 and 13, 1986, he was assessed the ten-day disciplinary suspension from May 20-31, 1986. As noted above, the propriety of that

particular discipline is not open to review in this proceeding. During the time he was under suspension he also was convalescing from his injury. Apparently Claimant sought and obtained permission for medical leave commencing June 1, 1986.

Near the middle of June 1986, Claimant requested return to service. At his request he was examined by the Company's physician on Friday, June 14, 1986, and cleared for return to service. He was notified of the examination results on Monday, June 17, and directed to report for duty at 7:00 A.M. on Tuesday, June 18, 1986, to a gang working at Eagle Rock under Supervisor Frost.

It is not disputed on this record that Claimant failed to report to Eagle Rock on Tuesday, June 18, 1986, and did not report until the afternoon of Friday, June 21, 1986. After being absent for two (2) days without excuse or authorization, Claimant did telephone the Clifton Forge office on June 19, 1986, and reported to the Assistant Supervisor that he "could not make it in." The Assistant Supervisor told Claimant that he would try to relay the message but that Claimant must personally speak with the Supervisor to obtain authorization for absence. There is no probative evidence on this record that Claimant contacted his authorized Supervisor or obtained permission for his absences from June 18-21, 1986.

Numerous awards of this Board construing the Discipline for Absenteeism Agreement between these Parties, support Carrier's conclusion that Claimant was subject to termination under Section 6 of the Agreement for his unauthorized absences of June 18-21, 1986. See Third Division Awards 24850, 25825, 21004, 22880.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.