

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28156  
Docket No. MW-28419  
89-3-88-3-205

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Burlington Northern Railroad Company

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

(1) The dismissal of Section Foreman S. W. Ellis for alleged unauthorized absences on October 6, 7, 8, 9, 10, 13, 14 and 15, 1986, was excessive, without just and sufficient cause and in violation of the Agreement (System File CP-168/AMWB 87-04-22H).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired his record shall be cleared of the charges leveled against him 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.

The Claimant was dismissed from service, following an investigation held in absentia, for his alleged unauthorized absences on eight occasions between October 6 and 15, 1986. At the time of his dismissal, Claimant had over fifteen years of seniority. His prior record included four written warnings and a ten-day suspension in 1985 for absenting himself from service.

The Organization argues that because of Carrier's failure to provide evidence that Claimant was properly notified of the investigation, it violated Rule 46 (C), which provides for timely notice of a hearing. It also contends that the Local Chairman's request for a postponement should have been granted. Carrier maintains that copies of exhibits proving proper notification were provided to Claimant's representative, and that the request for a postponement was untimely.

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From a review of the record, this Board concludes that while a postponement may have been warranted, Carrier essentially followed proper procedures in this instance. There can be no doubt that Claimant was absent on the days in question. Given Claimant's total record, however, we find that a lesser penalty than final discharge is called for in this situation. Thus, we shall reinstate Claimant, without backpay, on a last-chance basis, with the understanding that he must protect his assignment on a regular basis or else subject himself to dismissal.

A W A R D

Claimant sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.