

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Richmond, Fredericksburg and Potomac Railroad Company

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

(1) The dismissal of Trackman T. R. Moon, Jr. for alleged absence without permission was unjust and improper (System File R-TC-4511).

(2) The Claimant shall be reinstated to service with seniority and all other rights unimpaired; he shall have all improper Appendix letters cleared from his record and he shall be paid 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 had been employed by Carrier as a Trackman on May 11, 1987. The parties had entered into an Agreement to handle discipline involving absenteeism on April 6, 1979. The procedure embodied in that Agreement contained a series of progressive disciplinary penalties culminating in dismissal. Section 7 of that Agreement provides:

"Section 7. An employee who has been given the warning letter prescribed in Section 2 and who has been assessed five (5) days' overhead suspension by a second letter as provided in Section 3 of the Agreement will have the second letter removed from his record following the expiration of the three (3) month probationary period provided there are no further letters given to him during the probationary period. The warning letter will, however, remain on his record."

Claimant had been absent without proper permission on December 1, 1987, January 8, 1988, and April 14, 1988. He received a letter dated April 19, 1988, as follows:

"You have been absent without permission from proper authority on the following dates:

December 1, 1987 January 8, 1988 April 14, 1988

Rules and instructions governing Maintenance of Way employees require that no employee absent himself from duty, nor engage a substitute to perform his duties without permission from the proper authority. Employees must report for duty at the designated time and place.

As you have previously been given a warning letter of December 2, 1987, and were assessed five (5) day's overhead suspension on January 15, 1988 account your unauthorized absences, discipline of ten (10) workday's actual suspension is now being assessed to be served from April 25, 1988 through May 5, 1988 and your record will be noted accordingly pursuant to Section 4 of Memorandum of Agreement dated April 6, 1979. Continued unauthorized absences on your part will result in your dismissal from the services of the Railroad Company."

Claimant was again absent without proper authority on June 20, 1988, and by letter dated June 21, 1988, was dismissed from service, triggering the dispute herein.

The Organization contends that Carrier erred initially when it failed to remove the Appendix B letter from Claimant's file in accordance with Section 7 of the 1979 Agreement. Further, the error was compounded, from the Organization's point of view, when Claimant was dismissed based on the progressive procedure of the 1979 Agreement.

Carrier argues that Claimant was well aware of the consequences of his unauthorized absences and was properly disciplined. Carrier notes that Claimant had signed for all the letters and had taken no exception to them. Carrier also states that the Organization had received copies of the letters also and had failed to object in a timely fashion as provided in Rule 30 of the schedule Agreement. Having failed to grieve the alleged problem in timely fashion, Carrier asserts that Claimant had no right to raise the issue at this late date.


A study of the record of this dispute reveals that neither the Organization nor the Carrier properly complied with the self-executing provisions of the Memorandum of Agreement dated April 6, 1979. Had the Carrier followed the procedure properly, the January 8, 1988, letter would have been removed from Claimant's file and he would not have been dismissed following his last improper absence. On the other hand, the Organization failed to protest Carrier's obvious error in timely fashion as provided in the schedule Agreement. The record does reveal that the Organization received copies of the letters addressed to Claimant. Based on the history of this dispute, therefore, the Claim must be sustained at least in part; Claimant should not have been dismissed. Therefore, Claim sustained in part; Claimant shall be reinstated to his former position with all rights unimpaired, but without compensation for time lost.

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 28th day of February 1991.