

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Chicago Short Line Railway Company

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

(1) The dismissal of Maintenance of Way Employee J. Crabtree for his alleged failure to protect his assignment and alleged excessive absenteeism was arbitrary, capricious, excessive and in violation of the Agreement.

(2) Claimant J. Crabtree shall be '... reinstated and compensated for all lost wages including benefits and credits. His personal record should be expunged of any wrongdoing.'"

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.

At the time the instant case arose in November 1989, Claimant was employed in Carrier's Maintenance of Way Department in Chicago, Illinois. It is uncontroverted on the record that Claimant had been absent from work on October 25, 30, and November 1, 1989. On November 2, 1989 Carrier sent the Claimant a letter warning him that continued absences would result in disciplinary action. Moreover, the Claimant's supervisor personally spoke with Claimant regarding the correct mark-off procedure to be used, since he had failed to use the correct mark-off procedure on November 1, 1989.

Subsequently, the Claimant failed to report for work as scheduled on November 6, 8, 9, 10, 13, and 14, 1989. On November 14, 1989, Carrier notified Claimant to appear at a Hearing on November 22, 1989, "to determine [his] responsibility with regard to [his] excessive absenteeism and failure to properly mark-off your assignment on...November 6th, 8th, 9th, 10th, 13th and

14th." Claimant did not appear for the Hearing, and, when telephoned by his supervisor, he advised that he did not wish a postponement and the Carrier should proceed without him. Following the Investigation Claimant was notified of an assessment of fifteen days' suspension in a letter dated December 4, 1989. By letter of December 5, 1989, Claimant was notified of an Investigation into his absences without leave for the remainder of November and December 1, 4, and 5, 1989. Following an Investigation on December 20, 1989, Claimant was dismissed from Carrier's service.

The Organization, in its brief, suggests that Claimant had "good reason" for not appearing at work on the days in question; to wit, he felt the work being assigned him was outside of his craft. The rare exceptions to the "Obey now, grieve later" maxim in insubordination cases, such as genuine health or safety concerns, is well recognized by this Board. Third Division Awards 21538 and 27290. However, an employee attempting to invoke such exceptions bears a heavy evidentiary burden of proving that circumstances warranted such concerns. In the instant case, it is established on the record that Claimant unilaterally determined he would withhold himself from service until he was satisfied that he would do track work and not repair work. In short, the Claimant resorted to self-help to enforce his interpretation of the Agreement between the Parties.

Under the circumstances, the dismissal should be upheld. The Claimant was a relatively short-time employee (20 months) who demonstrated blatant disregard for the Carrier's policies and procedures. There is no basis on this record for making an exception to the "Obey now, grieve later" maxim. Accordingly, we see no reason to overturn Carrier's assessed discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1991.