NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 29497
Docket No. MW-29878
93-3-91-3-250

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employes
(
(CSX Transportation, Inc. (former
(Seaboard System Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Welder C. T. Taylor for alleged violation of Rules 500 and 502 of the CSX Transportation Operating Rules on February 22, 1990 was in violation of the Agreement [System File CT-90-42/12(90-453) SSY].

(2) As a consequence of the aforesaid violation, Mr. C. T. Taylor shall be reinstated to service with seniority and all other rights unimpaired, he shall be compensated or all wage and benefit loss suffered and his personal record shall be cleared of the charges against him."

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 of his dismissal from service, Claimant was headquartered at Ft. Lauderdale, Florida, and had worked at Hialeah, Florida, for approximately three weeks, residing at the camp facility at that location. On February 22, 1990, Claimant did not report to work.

At some time during what would have been Claimant's regular shift, he was apprehended by the Sheriff's Department while driving a CSX company vehicle in a "high crime area" known as "Liberty City." Carrier sent two employees to reclaim the vehicle. One employee drove Claimant to the Hialeah Yard and the other drove Carrier's vehicle back to Carrier property.

Upon his arrival at the camp car, Claimant admitted to the Road Foreman of Engines that he had not reported for duty as scheduled, nor had he notified anyone of his whereabouts. Claimant's explanation for this behavior was that he was looking for his personal truck. At approximately 3:30 P.M., following discussion of the matter with the Trainmaster and Division Engineer, Claimant was removed from service.

In a letter dated March 2, 1990, Claimant was charged as follows:

> "You are hereby charged with violation of Rule 500 and Rule 502 of the CSX Transportation Operating Rules, effective April 1, 1989, which reads in part, as follows:
>
> Employees must report for duty at the designated time and place. Employees must not absent themselves from duty.
>
> Employees must not participate in any unauthorized activity while on duty or while on Company property. Employees must not engage in any type of work or business that interferes with the proper performance of their duties. They must not do any work for themselves or others during their tour of duty or on Company property without permission from proper authority.
>
> The above charges result from you and your vehicle being retained by a police officer in a questionable part of town during a normal tour of duty on February 22, 1990.
>
> You will remain out of service until a formal investigation is held to develop the facts. Formal investigation will be held in Tampa, Florida, in Room 212 of the Division Office Building located at 5656 Adamo Drive, Tampa, Florida, at 1:30 P.M. on Friday, March 9, 1990.
>
> You may be represented by your duly-accredited officers and you may have others present who have knowledge of the matter; however, it will be your responsibility to arrange for their presence.

Your personal record file will be reviewed at the conclusion of this investigation."

At the request of the Organization, the Hearing was postponed until March 16, 1990. By letter of March 13, 1990, Carrier advised Claimant of the postponement.

The Hearing was held as scheduled. Claimant was not present at the Hearing, although his Representative was in attendance. Following the Hearing, Claimant was notified by letter of April 5, 1990, of his dismissal from service.

At the outset, the Organization raises a procedural objection based upon Carrier's holding the Hearing in absentia. The Organization points out that there is no proof that Claimant actually received the notice of Hearing or of postponement. The Organization further maintains that it is Carrier's responsibility to notify Claimant, not the Organization's. Therefore, the presence of Claimant's representative at the Hearing is not sufficient evidence that Carrier has fulfilled its contractual obligation to notify Claimant.

It is uncontroverted on the record before the Board that Carrier sent no fewer than three letters to Claimant notifying him of the initial charges, the original Hearing date and time, and the subsequent postponement of the Hearing. There is no evidence offered in the transcript of the Hearing or in subsequent correspondence between the Parties to suggest that Claimant's absence from the Hearing was other than voluntary. Under the circumstances, we do not find Carrier's denial of the Organization's motion to postpone the Hearing on March 16, 1990, to be unreasonable. Nor do we find that the procedure was thereby fatally flawed. (See Third Division Awards 15007 and 28774).

Claimant's absence without permission demonstrated a clear disregard for his responsibilities as an employee. Accordingly, Carrier had reasonable grounds for holding him out of service pending Investigation. Moreover, the evidence presented at the Hearing convincingly established Claimant's culpability in this case. In light of the Claimant's previous discipline record, we do not find that Carrier's assessment of the ultimate penalty of dismissal was inappropriate or excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1993.