

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29986
Docket No. MW-30668
93-3-92-3-456

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Davenport, Rock Island and North Western
(Railway Company

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

- (1) The discipline imposed upon B&B Helper R. L. Castel for his alleged absence without authority on June 25, 1991 and failure to report said absence on that date, was arbitrary, capricious, excessive and in violation of the Agreement (System File C-92-D070-4).
- (2) Claimant R. L. Castel shall be reinstated, his record 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 employe 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 were given due notice of hearing thereon.

Claimant was employed as a B&B Helper with over 11 years of seniority. On June 26, 1991, he was requested to attend an Investigation on July 1, 1991, for the following reason:

"...to determine facts, circumstances and your responsibility, if any, for your alleged failure to properly comply with the provisions of Rule 604 of the General Code of Operating Rules when on June 25, 1991, you allegedly

absented yourself without proper authority from your position as a B&B Helper when you did not report to work or receive permission to be absent from duty."

Claimant was held out of service pending the Investigation. After a postponement, the Investigation was held on July 19, 1991. On July 26, 1991, Claimant was dismissed from service.

The Organization takes the position that the Claimant was improperly held out of service pending the Investigation in violation of Rule 36. The pertinent portion of the Agreement reads as follows:

"B. In the case of an employee who may be held out of service pending investigation in cases involving serious infraction of rules the investigation shall be held within ten (10) days after date withheld from service. He will be notified at time removed from service of the reason therefor."

The Agreement does not define serious offenses, and based on the facts in this particular case, the Carrier acted properly in withholding the Claimant from service pending the Investigation.

A review of the transcript of the Hearing shows substantial evidence to support the dismissal of the Claimant.

The record also shows that Claimant had six previous disciplinary actions for failing to protect his assignment including one dismissal, which was reduced to a suspension.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.