

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31450
Docket No. MW-30871
96-3-92-3-715

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Duluth, Missabe and Iron Range Railway Company

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

- (1) The dismissal of Section Laborer J. P. Haedt for alleged absence without permission on August 14, 19, 20, 21, 22, 23, 28, 29, 30, September 3, 13, 16, 17, 18, 19, 20, 23, 24, 25 and 26, 1991 and for allegedly being under the influence of alcoholic beverage while subject to duty on September 26, 1991 was excessive, without just and sufficient cause and on the basis of unproven charges (Claim No. 24-91).
- (2) The Claimant shall have his record cleared of the charges leveled against him, he shall be reinstated in the Carrier's service with seniority and all other rights unimpaired and be compensated for all straight time and overtime hours he would have been allowed to work during his dismissal from service."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was employed by the Carrier for 18 years as a Section Laborer in the Maintenance of Way Department. On October 18, 1991, the Claimant was dismissed from service for being absent without permission. After an Investigation, the Carrier concluded that the Claimant "did not receive permission to be absent on any occasion," that he called in on 17 of the 20 days that he was absent and that "he was expressly informed on at least two occasions that he did not have permission to be absent from work." In addition, because of his prior record he had been specifically advised that he should call the Roadmaster or his supervisor, and not the Foreman, in order to get permission for any absenteeism. He was also found to be under the influence of alcohol while subject to duty.

The Organization filed the instant claim appealing the dismissal contending that the Claimant had "more than eighteen (18) years of satisfactory service." Furthermore, the Organization argued that the Claimant had called the Carrier on almost every occasion that he was absent and that he was suffering from alcoholism for which he "underwent clinical treatment" after his dismissal.

The Carrier denied the appeal and this claim is now before this Board.

This Board reviewed the evidence and testimony and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being absent without permission on numerous dates in August and September 1991. At the Hearing, the Claimant admitted that he was absent on the 20 dates listed in the charges. The record reveals that the Claimant had been advised how he was to ask for permission to be off if he wanted to be off on a specific date. The Claimant admitted that he had been told to contact the Roadmaster or his supervisor in advance of any absence.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant's previous record indicates that he was given several letters of warning during the course of his employment with the Carrier. He was also issued a 30-day suspension for being

absent without permission and insubordination on September 25, 1990. Given that previous disciplinary record, this Board finds that despite the Claimant's 18 years of service, the Carrier has shown sufficient just cause to terminate his employment. The Carrier simply cannot rely upon the Claimant to come to work. In the railroad industry that type of responsibility on the part of employees is very important.

For all of the above reasons, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.