

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31910
Docket No. MW-32284
97-3-95-3-47**

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
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (withheld from service pending hearing and subsequent dismissal) of Track Subdepartment Group 19 System Gang employe E. Haynes for allegedly being absent without proper authority on September 17 and 20, 1993 was unwarranted, on the basis of unproven charges and in violation of the Agreement (System File D-208/940123).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered beginning September 21, 1993 when he was initially and improperly withheld 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.

The parties being unable to resolve the issue, this matter comes before this Board.

On September 23, 1993, the Claimant was notified to appear for an Investigation into the allegations that the Claimant had been absent without proper authority on September 17 and 20, 1993. The Claimant was found guilty of violating Rule 604 and dismissed from service.

The Organization filed a claim on behalf of the Claimant contending that on both occasions the Claimant had called his supervisor's home and was unable to reach him personally and, therefore, he left a message with the supervisor's wife. The Claimant then contacted his supervisor later in the day. The Carrier still denied the claim.

This Board has reviewed the procedural argument raised by the Organization and we find it to be without merit. Rule 48(o) allows pre-Investigation suspensions where there are serious and/or flagrant violations of Company Rules or instructions. Since this was the Claimant's fifth occasion of failing to protect his assignment within a period of approximately five months and the eighth time that he was charged with the same Rule violation, we find that this was flagrant enough to fit under the requirements of Rule 48(o).

With respect to the merits of this dispute, this Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to protect his assignments on September 17 and September 20, 1993. The Claimant overslept on the first day and he had car trouble on the second occasion and could not come into work. The Claimant had been instructed that he must protect his assignments or he would be facing serious discipline.

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 actions to have been unreasonable, arbitrary, or capricious.

The record reveals that the Claimant was dismissed from service under the Carrier's discipline policy known as, "Upgrade." Under the Upgrade program, an employee who is guilty of the same rule infraction three times during a 36-month period may be subject to dismissal. In this case, the Claimant had been in violation of the same rule within a three-month period. He had been given a last chance to improve his behavior and failed to live up to the requirements. This Claimant continued to fail to protect his assignment after having been warned about it on numerous occasions.

Given the previous background of the Claimant, the Carrier's Upgrade Policy, and the fact that the Upgrade policy has been upheld by numerous arbitrators since its inception, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment.

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 4th day of March 1997.