

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42594
Docket No. MW-42710
17-3-NRAB-00003-140423**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) days suspension] imposed upon Mr. R. Hawkins by letter dated November 20, 2013 in connection with having been found guilty of an alleged charge that ‘ . . . on Tuesday, October 22, 2013, while in Auburn, ME you were an Equipment Operator on the Tie Crew and at 0800 you allegedly then proceeded to walk off company property without properly receiving permission from your supervisor, Drew Patterson.’ was arbitrary, capricious, excessive, on the basis of unproven charges and in violation of the Agreement (Carrier’s File MW-13-28).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now remove all reference to the aforesaid discipline from Claimant R. Hawkins’ record 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 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 were given due notice of hearing thereon.

The Claimant received the above-stated discipline after an investigation “to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below: Violation of PGR-C, PGR-N: Specifically, on Tuesday, October 22, 2013, while in Auburn, ME you were an Equipment Operator on the Tie Crew and at 0800 you allegedly then proceeded to walk off company property without properly receiving permission from your supervisor, Drew Patterson.”

The Board finds the Organization’s procedural objections unpersuasive. The Board finds substantial evidence in the record to sustain the Carrier’s determination.

On the morning of October 22, 2013, the Claimant prepared a tie crane machine for him to operate during that day’s tour, and had it ready for use sometime after 6:30 A.M. and shortly before 7:00 A.M. The Claimant had been involved in an incident the previous day while operating a tie crane machine. Because of the open investigation regarding the previous day’s incident, sometime after 6:30 A.M. and shortly before 7:00 A.M, the Claimant’s Supervisor directed the Claimant’s Foreman to inform the Claimant that the Claimant was not to operate the tie crane machine, and the Claimant would instead be working on the ground until further notice. Shortly before 7:00 A.M. the Foreman did so, and the Claimant inquired of the Foreman as to why this change of assignment. The Foreman informed the Claimant that it was the Supervisor’s decision, and that the Claimant could discuss it with the Supervisor. The Claimant admittedly was upset, and responded to the Foreman: “I am going home and I’ll see you tomorrow.” The Foreman told the Claimant that he needed to speak with the Supervisor before leaving the job site.

The Claimant telephoned the Supervisor at approximately 7:01 A.M, but the Supervisor was on another call and did not get Claimant’s call. At approximately 7:27 A.M. the Supervisor saw the Claimant’s missed call and called the Claimant back. The Claimant did not feel his phone vibrate, and missed the Supervisor’s call. The Claimant marked-off and left the property sometime between 7:45 A.M. and 8:00 A.M, without talking to or informing any Supervisor. Later that day, the Claimant saw the Supervisor’s 7:27 A.M. missed call on his (Claimant’s) phone. The Claimant did not return the Supervisor’s call because he (Claimant) had already left the property, and knew that the Foreman was aware the Claimant had left. The Claimant

saw a doctor later the same day, for possible “anxiety attacks.” He was diagnosed with “acute reaction to stress and insomnia.”

The record establishes that the Claimant knew or should have known he had to speak with a Supervisor to properly mark-off before leaving the property. The Claimant failed to do so. The Claimant did not establish the existence of a medical emergency that prevented him from doing so.

Under the facts and circumstances of this record, the Board finds that the discipline assessed by the Carrier was neither arbitrary, capricious, unproven nor in violation of the Agreement. Therefore, said discipline will not be disturbed by the Board.

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 19th day of April 2017.