

**BEFORE PUBLIC LAW BOARD NO. 1837**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**NORFOLK & WESTERN RAILWAY COMPANY**

**Case No. 117**

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The dismissal of D. R. Mock for excessive absenteeism, failure to protect his assignment on August 29, 1997, and failure to follow the foreman's instructions on August 29, 1997, was unjust, arbitrary, excessive, an abuse of the Carrier's discretion, and in violation of the Agreement. (Carrier File MW-FTW-97-92-LM-466.)
2. Laborer Mock shall now be reinstated with seniority, vacation, and all other rights unimpaired and he shall be compensated for all wage loss suffered.

**FINDINGS:**

Claimant D. R. Mock was employed by the Carrier as a laborer at the time of the claim.

On September 3, 1997, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the charges of excessive absenteeism in that he had been absent all or part of 32 days out of 128 days since March 1, 1997, through and including August 29, 1997 (Rule GR-6); for failing to protect his assignment in that on August 29, 1997, after working his assignment for thirty minutes, he left without permission; and for failing to follow the instructions of Foreman Stanley Fritz in that he refused to be transported to his work location in a company vehicle on August 29, 1997 (Rule GR-3).

After one postponement, the hearing took place on September 12, 1997. On September 18, 1997, the Carrier notified the Claimant that he had been found guilty of the charges and was

being assessed discipline of dismissal from all service with the Carrier.

The Organization filed a claim on behalf of the Claimant challenging the discipline. The Organization contends that there was a miscommunication between Foreman Fritz and the Claimant, which should not result in the Claimant's dismissal. The Organization further contends that the Carrier violated Rules 22-(A) and (E) of the parties' working agreement dated February 1, 1951, failed to conduct a fair and impartial hearing, failed to adequately meet its burden of proof, failed to take into account all of the surrounding circumstances of the incident, and that the discipline assessed was unjust, excessive, and an abuse of the Carrier's discretion.

The Carrier denied the claim based on the evidence in the record, contending that the Claimant has continually exhibited an utter disregard for obeying Carrier rules and that sufficient evidence was adduced at the investigation to substantiate the Claimant's guilt, including the Claimant's own admission, warranting the dismissal.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

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 excessive absenteeism and failing to protect his assignment in violation of Carrier rules. In addition, the Carrier has proven that the Claimant left his assignment without permission, which is a very serious violation.

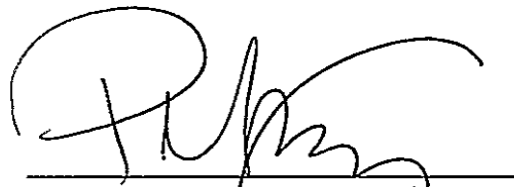
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will

not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

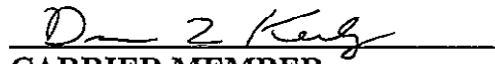
Given the seriousness of the wrongdoing committed in this case, which the Carrier properly reflects as a "cavalier attitude towards protecting his assignment," this Board cannot find that the Carrier's action in terminating the Claimant's employment was unreasonable, arbitrary, or capricious. Therefore the claim will be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**

  
\_\_\_\_\_  
**CARRIER MEMBER**

**DATED:** 3-10-00

**DATED:** 3-2-00