

Award No. 38
Case No. 38

Public Law Board No. 2203

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

1. Carrier violated Rules Agreement effective April 15, 1944, as amended, particularly Rule 5, when it assessed discipline of dismissal on Track Foreman Angel Gonzales, December 23, 1977.
2. Claimant Gonzales' record be cleared of the charge brought against him on November 14, 1977.
3. Claimant Gonzales be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 5-a.

FINDINGS:

Claimant, an employe with four years service, was dismissed for absenteeism. The evidence establishes that he was absent without permission and did not

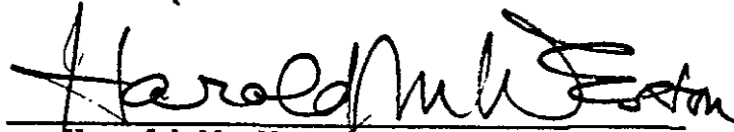
report off duty on five working days in October 1977 and eight days during the following month. In the main, this evidence consists of claimant's own testimony.

In assessing the amount of discipline to be administered, it was not inappropriate for Carrier to consider claimant's prior record, including the discipline administered to him in February 1975, March 1976 and April 1977 for previous absences without permission.

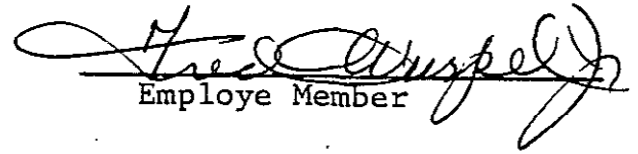
In the light of this record, we find no persuasive basis for interfering with the disciplinary action administered by Carrier. Despite Petitioner's vigorous contentions to the contrary, we are satisfied that there is evidence to support Carrier's findings and dismissal decision. We agree with the Organization's contention that no reference to prior discipline should be made in the charge served upon claimant. That defect, however, is not prejudicial in this case since no objection to the charge was made at the outset of the hearing and claimant admitted that he had been absent without permission on the dates in question.

AWARD: Claim denied.

Adopted at Philadelphia, Pa., August 14, 1979.


Harold M. Weston, Chairman


Carrier Member


Employee Member