

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 25

Case No. 25

System Docket No. BMW-E-D-187

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Kenneth Gibson was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Gibson shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule "K" of the Scheduled Agreement.

FINDINGS

The Claimant served as a Crossing Watchman in Waltham, MA. His regular tour of duty was eight hours a day, with a 20-minute paid lunch period which he was expected to take at his work station. Following observations of him by two Carrier officials on

December 31, 1992, the Claimant was subject to an investigative hearing based on the following:

CHARGE ONE: Alleged violation of Rule O of the NRCP Rules of Conduct which reads in part:

Employees must report for duty at the designated time and place and must attend to their duties during assigned working hours. Employees may not be absent from their assigned duty without permission from their supervisor.

SPECIFICATION:

In that on December 31, 1992 from approximately 7:00 p.m. until approximately 8:00 p.m. you abandoned your assignment as Crossing Watchman at Moody Street in Waltham.

CHARGE TWO: You are also charged with excessive absenteeism.

SPECIFICATION:

In that since your reinstatement to duty effective June 10, 1991 you have been absent from duty on the following dates:

[18 incidents of absence of one or more days cited]

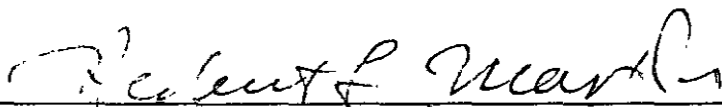
The above constitute excessive absenteeism over a substantial period of time.

The record shows that the Claimant was observed to have left his duty post for approximately one hour on December 31, 1992, without permission. His contention that he had checked with the Tower Operator concerning train movements was not confirmed. He clearly abandoned his duty, placing the Carrier at considerable risk with an unguarded crossing. In the Board's view, this is sufficient basis for his dismissal from service.

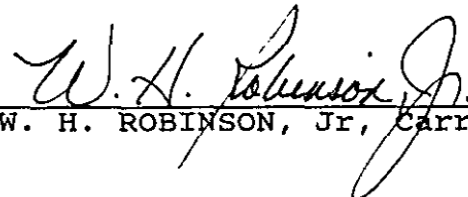
As to the listed absences, the Organization notes that some of these were for authorized leaves of absence. Viewing the attendance record in its entirety, however, it provides no basis to suggest that the Carrier's disciplinary action should be mitigated.

A W A R D

Claim denied.


HERBERT L. MARX, Jr., Chairman and Neutral Member


B. A. WINTER, Employee Member


W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 9-21-93