

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

**UNION PACIFIC RAILROAD COMPANY
(former Chicago and North Western Transportation Co.)**

Case No. 256

Award No. 233

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator K. Hall for his alleged violation of Rule 1.15 in that he was absent without permission on August 25, 26, and 27, 1999, was without just and sufficient cause and capricious (System File 9KB-6568D/1213755).
- (2) Machine Operator K. Hall must be reinstated with all rights unimpaired, compensated for all lost time, made whole for all losses, and have any reference to the investigation removed from his personnel record.

FINDINGS:

Claimant K. Hall was employed by the Carrier as a machine operator at the time of this claim.

On August 30, 1999, the Carrier informed the Claimant to appear for a formal investigation into the charges that he allegedly absented himself from his regular assignment without proper authority when he failed to report for duty at the designated time and place, 7:30 a.m. at Oak Park, Illinois, on August 25, 26, and 27, 1999, while he was assigned as a machine operator on Gang 3642.

The hearing took place on September 3 and 8, 1999. On September 14, 1999, the

Carrier notified the Claimant that he was found guilty of all charges and violating Rule 1.15. The Carrier assessed the Claimant a Level 5 discipline because he committed three repetitions of the same rule infraction during a thirty-six month period, which resulted in his dismissal from the service of the Carrier.

The Organization filed a claim arguing that the discipline assessed was capricious and unsupported and requesting that the Claimant be reinstated with all rights unimpaired, be compensated all lost time, be made whole for all losses, and have any reference to the investigation removed from his personnel record. The Carrier denied the claim.

The Carrier argues that during the Claimant's two years of employment with the Carrier, he had been disciplined twice concerning the "Absence from Duty" policy. The Carrier maintains that the Claimant knew his responsibilities concerning this policy. The Carrier contends that the Claimant missed several days prior to August 24 without authority, showed up late on August 24, and was sent home by his foreman and was instructed to contact his manager, but the Claimant failed to do so. The Carrier argues that the Claimant's manager testified that the Claimant was absent without calling because the Claimant was mad at him. The Carrier contends that the Claimant knew that he was supposed to come into work on the dates in question because those were his assigned work days, and the Carrier is not required to tell each employee to come to work each day. The Carrier further claims that the manager was not aware of the Claimant's personal problems because the Claimant never contacted him to discuss the reasons for his missing work, but, if informed, would have instructed the Claimant to contact

Employee Assistance. Further, the Carrier argues that the Claimant admitted that he was absent without authority on the dates in question. The Carrier maintains that the Claimant is a short-term employee who has a significant absenteeism problem that surfaced early in his employment and continued unabated until he was dismissed. The Carrier also argues that repeated absences have been held to be appropriate circumstances for withholding an employee from service pending investigation. In addition, the Carrier maintains that progressive discipline failed to dissuade the Claimant from being absent without permission and that the discipline assessed was in strict accordance with the UPGRADE discipline policy.

The Organization argues that the Claimant's manager never gave the Claimant instructions on reporting off work when he was sent home on August 24, 1999. In addition, the Claimant was experiencing domestic problems which affected his ability to work and was never informed by the Carrier that the Employee Assistance Program could assist him. The Organization also argues that the Claimant was wrongfully withheld from service pending the outcome of the investigation and that the Carrier prejudged the Claimant's guilt. The Organization also maintains that discipline is to be remedial and, yet, the Claimant was terminated without being advised by his manager how to report off work and was not advised about Employee Assistance. The Organization alleges that the Carrier's mention of the Claimant's history of non-compliance with the Absence from Duty policy is not part of the record and that the Carrier is merely attempting to introduce new information post investigation. The Organization maintains that the Level 5 discipline assessed the Claimant was prejudicial, procedurally defective, lacked the

requisite burden of proof, and was excessive and capricious.

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 agrees that repeated unauthorized absences have been held to be appropriate circumstances for withholding an employee from service pending the investigation of his case. In addition, the record reveals that the Claimant was afforded all of his due process rights.

With respect to the substantive issue, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was in violation of Rule 1.15 when he absented himself from work without authority on August 25, 26, and 27, 1999. The Claimant admitted that he was absent on those days, and he also admitted that he was aware of the procedures he was to follow to notify the Carrier that he would not be present for work.

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.

The record reveals that this Claimant had been previously found guilty of violating the same rule, Rule 1.15, on two prior occasions. We find that this short-term employee with only two years of service had been given sufficient opportunities to reform his attendance behavior. The Claimant was apparently unable to do that. We find that the Carrier did not act in an arbitrary, capricious, or discriminatory fashion when it

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terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied!



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 1-4-02



CARRIER MEMBER

DATED: _____