

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 19

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: CSX Transportation, Inc.

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

Dismissal of L. Manor, ID# 172629, as a result of
investigation held October 29, 1990, at Florence, South
Carolina.

FINDINGS

On October 10, 1990, the Carrier notified Claimant Manor to
appear for a formal investigation in connection with the following
charges:

You have been absent from work without permission on . . .
September 25, 26, 27, October 1, 2, 3, 4, 8, and 9.
You are hereby charged with violation of Rule 17 (B) of
the Agreement . . .

Rule 17 (B): An employee desiring to be absent from
service must obtain permission from his foreman or the
proper officer. In case an employee is unavoidably kept
from work, he must be able to furnish proof of his
inability to notify his foreman or proper officer.

The hearing took place on October 29, 1990, without the presence
of the Claimant. The Claimant apparently failed to contact the
Carrier to request a postponement, which action was considered by the
Carrier to be desertion. On November 16, 1990, the Carrier notified
the Claimant that he had been terminated effective that date.
Thereafter, the Organization filed a claim on Claimant's behalf,
challenging his dismissal.

This Board has reviewed the procedural argument raised by the

Organization, and we find that the ten-day period begins on the last day of a string of absences such as the one that the Claimant collected. The fact that there were previous days upon which the Claimant was also absent without permission does not in any way detract from the fact that he was absent without permission on October 8 and 9 and received a letter on October 10, 1990, charging him with the violation of Rule 17 (B).

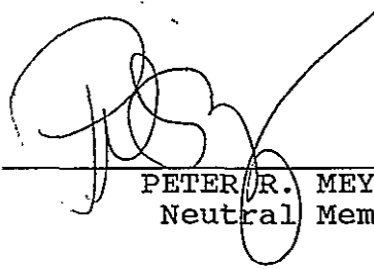
With respect to the merits, this Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was absent without permission on September 25, 26, 27, October 1, 2, 3, 4, 8, and 9. Consequently, he was properly found guilty of violation of Rule 17 (B) of the Agreement, which requires that an employee obtain permission from his foreman or the proper officer prior to being absent.

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 the Claimant previously received a ten-day suspension for "laying out." Consequently, the Claimant had been properly warned and previously disciplined for a similar offense and the Carrier's warnings apparently fell on deaf ears. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment after this incident.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Organization Member

Carrier Member

Dated: _____