

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21455  
Docket Number MW-21524

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Seaboard Coast Line Railroad Company

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

(1) The suspension of Trackman W. J. Wilson 'for seven (7) calendar days commencing on August 11, 1974 and terminating on August 17, 1974' 'was based on disproven or unproven charges, statements not introduced at the hearing, and was improper and unwarranted.' (System File C-4/12-39 (74-12) E3)

(2) Trackman Wilson's record be cleared of the charges of insubordination and he be paid for all wages lost as a result of the suspension described in Part (1) hereof.

OPINION OF BOARD: Claimant, Trackman W. J. Wilson, was suspended for seven days for allegedly failing to comply with the instructions of an assistant foreman.

In discipline cases, the burden of proof is upon the Carrier. While it is not within the prerogative of the Board to determine the credibility of the evidence produced on the property, it is well within the forum of appeal to determine whether or not the evidence was sufficient to mandate a finding of guilt. In the instant matter, the evidence surrounding the alleged insubordination was not sufficient to deduce a finding of guilt.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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The claim is sustained in that the Carrier's decision that Claimant was guilty as charged is not supported by sufficient evidence.

A W A R D

Claim sustained: Claimant will be paid for all wages lost from August 11, 1974 through August 17, 1974.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1977.

