

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21.563  
Docket Number MW-21687

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Louisville & Nashville Railroad Company

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

(1) The dismissal of **Track** Repairman Paul S. **Sizemore** was without just **and** sufficient cause and on the basis of unproven and disproven charges (System File **D-105846; E-306-12/1-16 (51)**).

(2) The **claimant's** record shall be cleared of the charge; he **shall** be reinstated to service **and** paid for **any** time lost - all in conformance with the provisions of the first paragraph of Agreement Rule 27 (**f**).

OPINION OF BOARD: **Claimant** was dismissed for leaving work without permission at 10:00 **a.m.** on Sunday, January **12, 1975**. The regular work days were Wednesday through Sunday, **7:00** a.m. to **3:30** p.m. Claimant was **19** years old **and had** been employed by carrier as track repairman for some four months.

The proof is equivocal as to the circumstances of Claimant's departure. In response to a **leading** question, the foreman testified at the hearing that he did not give **Claimant** permission to leave. Part of the **foreman's** testimony is as follows:

"Q. Give us what information you can concerning these facts?

A. He left around 10 o'clock A.M. because of bad weather, cold and rainy.

Q. Did you give Mr. **Sizemore** permission to leave work at 10 A.M., Jan. **12, 1975**?

A. No sir.

Q. Has Mr. **Sizemore** ever requested you to furnish him without a copy of the agreement between the M. of W. Workers **and** the **L&N**?

A. I **can't** remember.

Q. Did you ever inform Mr. **Sizemore** that he had the privilege, being a track **repairman**, of **knocking himself** off at any time he decided that the weather was not suitable to work in?

A. No, they went to a union meeting, four men, they brought the news back to me that in inclement weather that it was up to the foreman whether they **knocked** off or not and I told them that I could not **knock** anyone off, that they would have to knock themselves off."

The foregoing is not convincing that **Claimant** was either ordered not to leave or **was** refused permission to leave.

Evidence is that it was very cold and rainy that day end that two **other members** of the crew **had** been allowed to leave at **9:15** a.m. Claimant says he had a cold and sore throat and when he asked to leave because he **was** afraid he would "catch the flu" he was told by the foreman that "if he (i.e. the **foreman**) **was** a laborer he would **knock** himself off and go home" and "in the **agreement** book it says that a laborer can knock himself off because of inclement weather." **Claimant** understood he would not be **paid** for the rest of the day.

About one week prior, Claimant had been warned about leaving work. He belatedly brought a doctor's statement dated January 16, 1975, **that** he had the flu on **January** 12. A written instruction prohibits employees from "absenting themselves from duty - - - without **proper authority**." Of course, it could not be the **case** that any employee was **allowed** to "knock himself off" just because of bad weather. But the proof, in whole, is **ambiguous** as to how much **Claimant** knew, or should have known, about the ties, end what he was **actually** told by the foreman.

E-roof of the **charge** being slight and not **substantial**, we **cannot** **uphold** the discharge. But we find no good reason to grant further relief. Claimant shall be reinstated, with seniority and other rights unimpaired, but without any compensation or benefit for the time off work.

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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; end

That the Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.