

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21788  
Docket Number MW-21927

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis-San Francisco Railway Company

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

(1) The discipline assessed to **Trackman R. L. Peyton** for alleged 'violation of Rules 176 and 189' was unwarranted, without just and sufficient cause and on the basis of 'unproven charges (System File B-990).

(2) The claimant's personal record shall be cleared of the charges placed against him and reimbursement shall be made for all wage loss suffered, all in accordance with Rule 91(b) (6) of Article 11."

OPINION OF BOARD: Claimant was discharged from employment as **Trackman** on November 29, 1975 for violation of Rules 176 and 189 of the Rules for the **Maintenance** of Way and Structures. By letter of March 25, 1976, Carrier's Assistant Chief Engineer offered to restore claimant to service without pay for time lost. The Organization initially rejected this offer, but claimant subsequently returned to work on May 10, 1976 without prejudice to his claim for pay for time lost.

The disciplinary action against claimant followed an exchange between him and his supervisor, Foreman **G. S. Lockhart**, on the day of his dismissal. Claimant did not bring his lunch, although he had been advised to do so on the previous day, and all other employees in the work group did so. When told to eat lunch quickly and get back to work, claimant said he was going home to eat as he had no money to buy anything **at a** nearby restaurant, as suggested by the foreman. He refused the foreman's offer to buy his lunch and said he was going home. The foreman responded that if he went home "he was **through.**" **Claimant** then left the job and did not return.

Rule 176 provides, in part, that employees who are insubordinate will not be retained in **service**. Rule 189 provides that employees must not **absent** themselves from their duties without proper authority.

The clear **weight of** testimony at the investigation establishes that 'claimant defied his supervisor's directions, and left work without

authority. This Board concludes that the Carrier was justified in determining that Rules 176 and 189 had been violated. We further believe **that** the penalty invoked was proper in light of claimant's past record, which included disciplinary action for similar rules violations.

**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

Carrier's assessment of discipline to **Trackman** R. L. Peyton was warranted.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

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

