

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Award Number 22149**  
**Docket Number MW-21998**

**Herbert L. Marx, Jr., 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 suspension of one (1) day imposed upon Trackman R. J. Knight was improper and without just and sufficient cause (System File E-1402).**

(2) **Trackman R. J. Knight shall now be allowed the benefits prescribed in Agreement Rule 91(b)(6), Article 11.'**

**OPINION OF BOARD:** **Claimant was given a one-day disciplinary suspension for his absence from work on March 17, 1976, without permission in violation of Carrier's Rule 189 which reads as follows:**

**"189. Employees must not absent themselves from their duties, exchange duties with nor substitute others in their place, without proper authority."**

**Upon reporting for work on the following day, Claimant was immediately given the suspension for his failure to report the previous day. During the investigation held in the matter, Claimant asserted that he had been granted permission to be off duty on March 17 by his regular foreman (who was not on duty when the Claimant reported on March 18). The regular foreman testified that he had not been asked for nor had granted such permission prior to March 17.**

**It is a well established principle that the Board will not substitute its judgment for that of a fair and impartial hearing officer in resolving conflicts of testimony. In this case, however, the Board can properly make some further inquiry, for two reasons: (a) the disciplinary action was taken prior to the investigatory hearing; and (b) there was no opportunity for confrontation between the Claimant and his regular foreman upon his return on March 18.**

It is the Carrier's responsibility to make an affirmative case for disciplinary action. Here, the facts are that the Claimant did fail to report on March 17. Further, his attendance record is notably deficient, showing ten absences out of 51 days in the previous three months. To respond, and in view of his prior attendance record, the Claimant needs more than an unadorned statement that he had received permission to be off. Alleged witnesses to the discussion with the foreman did not appear at the hearing. No explanation of the purpose of the day off was given. Had the foreman granted permission for the Claimant to be absent, it seems unreasonable for him simply to deny it.

The Organization correctly states that this dispute is a matter of the word of one employee against one supervisor. Nevertheless, in view of the reasoning fallowed herein, the Board finds that the Carrier's action should not be disturbed.

**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 Employee involved in this dispute are respectively Carrier and Employee 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.

