

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22225
Docket Number MW-22253

Nathan Lipson, 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 dismissal of **Trackman** R. B. Houston for alleged violation of **Rules** 176, 189 and 190 was excessive and wholly disproportionate to **the** offense with which charged (System File B-1520).

(2) **Trackman** R. B. Houston shall now be allowed the benefits prescribed in Agreement Rule 91 (b) **(6)**, Article 11."

OPINION OF BOARD: On August 26, 1976, **Trackman** R. B. Houston was dismissed from the Carrier's service for alleged violation of Rules 176, 189 and 190. Rule 176 is fundamentally directed against negligent, insubordinate, dishonest, immoral and otherwise substantially improper behavior, and the penalty for such offenses is discharge. Rule 189 prohibits **employees** from absenting **themselves** from **their duties** without proper authority. Rule 190 bars the unnecessary use of telephones, and also prohibits personal messages being sent on railway wires.

The uncontradicted evidence is that on May 13, 1976, Mr. Houston made two personal calls to Osceola, Arkansas and one to Little Rock. On July 12, 1976, the **employee** made two such personal and unauthorized calls to Osceola. The Carrier was billed \$2.84 by South Central Bell Telephone Company for said five telephone calls. The record shows that the Claimant acted entirely without justification, and in violation of the aforesaid Rules in making the contested telephone calls. The Rules here involved **cover** significant offenses, and their observance by **employees** is vital to an orderly and proper operation. Accordingly, the conclusion is inescapable that the evidence supports discipline for the instant infractions.

On the other hand, the Board has an obligation to determine whether the penalty imposed is commensurate with the violations that have been established, or whether the discipline is excessive. It is well established that in discharge cases, the offense must be of a

capital nature in order for the ultimate penalty to be approved. In the present case, it appears that though the **employee** absented himself from work and incurred charges to the Carrier, the degree of misbehavior is somewhat less than that which would justify termination. In other words, substantial discipline is indicated, but discharge is not.

However, nothing herein should be construed to indicate that violation of the Rules here involved can be tolerated. Under the circumstances it is determined **that** the discipline should be reduced to a disciplinary suspension, and that the Claimant should be returned to service with seniority unimpaired, but with no reimbursement for **time** or benefits lost. The Claimant should also understand that any repetition of the instant behavior, or future violation of the Rules here involved, will result in discharge.

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;

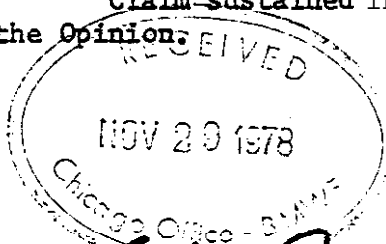
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the conditions set forth in the Opinion.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

U.W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November 1978.