

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22842
Docket Number **MN-22634**

Richard R. Rasher, Referee

PAKIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(National Railroad Passenger Corporation

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

(1) The suspension of thirty (30) days imposed upon **Trackman**
W. J. Smith (Local Chairman) for allegedly 'walking off the job without
permission on August 5, 1977' was without just and sufficient cause,
unwarranted and on the basis of unproven charges.

(2) The **claimant's** record shall be cleared of the charge
placed against him **and** he shall be reimbursed for all wage loss suffered."

OPINION OF BOARD: Claimant was assessed a **30-day** suspension on
August 30, 1977, for allegedly walking off the job
without permission on August 5, 1977. Carrier imposed the discipline
following a hearing held on August 23, 1977, at which it was determined
that Claimant violated the standing rules concerning absence from duty
for the purpose of attending to official union business.

On August 5, 1977, Claimant was assigned as **Watchman** for the
North Philadelphia Interlocking Gang, **8:00** a.m. to **4:30** p.m. shift.
At a few minutes before 10:00 a.m., on August 5, 1977, a group of **six** of
Claimant's constituents called Claimant and informed him that they
needed his **immediate** presence for urgent union business at the 30th
Street Station. In his haste to reach the 30th Street Station by the
next available train, the '957 Trenton Local,' Claimant asked a
qualified watchman to relieve him. Claimant also asked the watchman
to inform his **foreman** that Claimant was on official union business.

The standing rules concerning absence from duty required
Claimant to inform his foreman that he would be absent for official
union business. **Claimant** was aware that any absence not prearranged
with his foreman would be dealt with as an unexcused absence.

Claimant defends his actions of August 5, 1977, by the urgency
of the situation and by the fact that his **foreman** was not on the tracks
when the call came in from Claimant's constituents. **Claimant found**

himself in a precarious position: Should he leave **immediately** and fulfill his responsibilities as a representative? Or should he delay his departure and follow the rule on absences from duty by first notifying his **foreman?** By choosing the former, Claimant failed to fulfill his responsibilities as an **employee.** This failure cannot be condoned.

Although the record supports a finding of Claimant's guilt, the **30-day** suspension should be reduced to a **15-day** suspension. In light of mitigating circumstances, including the foreman's unavailability, the urgency of the circumstances and the fact that **Claimant** did find a **replacement,** suspension should be reduced as stated above.

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 Employes involved in this dispute **are** respectively Carrier and **Employes** 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 Opinion.

NATIONAL RAILROAD ADJUSTMENT **BOARD**
By Order of Third Division

ATTEST:


A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980,