

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23024
Docket Number MW-23046

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Seaboard **Coast** Line Railroad **Company**)

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

(1) The dismissal of **Trackman** Leon Spencer was without just and sufficient cause and was exceedingly **disproportionate** to the **offense with which charged** (System File 12-39 (78-13) J/C-4 (13) -LS).

(2) **Trackman L.** Spencer shall be returned to service with seniority and all other **rights** unimpaired, the charge **levelled** against him be stricken from his record and he shall be reimbursed for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a **trackman**, with approximately six years of service, **and** was assigned to Section Force **8164** at Bradley, Florida.

Claimant marked off because of illness **from November 14 through November 22, 1977. Upon** his return to work on November **23**, the **Road-**master **gave** him a letter, and instructed him to take it to **his personal** physician and return it to the **Roadmaster**. The Roadmaster heard nothing further from the claimant and on November **28** he called the claimant's doctor. **He was informed** that the letter had been completed by the doctor, but claimant **did not** come back on **November 23** and pick it up as he indicated he would.

Claimant contacted the Roadmaster on December **5, 1977**, and the **Roadmaster instructed him to return to work.** He **was** asked why he did not return the letter **from** the doctor on November **23**, as instructed. He said his truck was broken down and he did not have any transportation, and **indicated** that he did not have a telephone when asked as to why he did not get in touch with the **Roadmaster** or Foreman to explain the situation.

On December 6, 1977, **claimant** was notified by the
Roadmaster:

"Account of you being absent from work on November 25, 28, 29, 30, and December 1 & 2 without proper **excuses** you are hereby charged **with** violation of Rule 17-B of working agreement between the S.C.L. Railroad and the Brotherhood of Maintenance of Way **Employees.**

Rule 17-B is as follows:

'An employee **desiring to** be absent from **service** must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify **his** foreman or proper officer.'

"You will be **granted a hearing as** per agreement with the Brotherhood of Maintenance of Way **Employees.** You will be notified of the date and time of this hearing."

The hearing was **scheduled** for 1:00 P.M., December 16, 1977, and was **conducted** on that date with the **claimant present** and **represented.** A copy of the transcript **of the hearing has been made** apart of the record. Claimant was dismissed from service on January 4, 1978.

Substantial **evidence** was adduced at the **hearing on December 16, 1977,** showing that **claimant** was **in** violation of Rule 17-B of the applicable **agreement, and** also that he did not **comply with** the instructions **given him by** the **Roadmaster** concerning the letter to be completed by his doctor.

The record also shows that claimant had been warned on **eight** prior occasions concerning violation of Rule 17-B, **and** that he had previously been disciplined for the same offense. Apparently the prior warnings and discipline did not have the desired effect.

Eased upon the entire record, there is no proper **basis** for **this** Board to interfere with the discipline imposed.

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 **Agreement** was not violated.

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 28th day of October 1980.