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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23224**
Docket Number **MW-23152**

Arnold **Ordman**, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance** of Way **Employees**
(Terminal **Railroad** Association of St. Louis

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

(1) The **suspension** of ten (10) **days** imposed upon **Trackman** Freddie Williams was without just and sufficient cause and wholly disproportionate to the offense with which charged **/System** File TRRA **1978-35/**.

(2) **Trackman** Freddie **Williams** shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a **Track** Laborer with a Company seniority date of **March** 28, 1969, was regularly assigned to System Gang No. 4 with the hours **7:30** a.m. to **4:30** p.m. and rest days of Saturday and Sunday. Claimant did not report for work on his regular assignment on Monday, August 14, 1978, and, because of his failure to do so, a hearing was scheduled to determine the facts and Claimant's responsibility, if any.

On **October** 5, 1978, Claimant was notified by certified **mail** that upon review of the transcript of hearing, his responsibility for failing to protect his assignment without proper authority was clearly indicated, and that a ten (10) day suspension, beginning October 12, 1978, was assessed against him.

The Brotherhood protests the suspension on the ground that it was without just and sufficient cause **and** wholly disproportionate to the offense charged. The Brotherhood also invokes Rule 22(a) which reads:

"**Except** in cases of sickness or personal injury,
employee **must** secure permission before laying off
unless unavoidably prevented from doing so."

The claim here made rests on the proposition that **Claimant** was unavoidably prevented from securing permission before being absent because of mechanical failure of his automobile.

We find upon our review of the record that there was substantial evidence to establish that **Claimant** failed to protect **his** assignment on August 14, 1978, and that **Claimant** failed to produce any probative evidence that his unauthorized absence was due to any legitimate reason. It is unquestioned that the hearing was

conducted in a fair and impartial wanner. Moreover, ad especially **in view** of the fact that **Claimant** was guilty of **like offenses** in the past, there is no tenable basis for a **claim** that a ten (10) day suspension was excessive, arbitrary or capricious. We therefore deny the claim. See Third Division Awards 16860 (**McGovern**); 16816 (**Brown**); 20549 (**Franden**).

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 weaning 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 **16th** day of **March 1981**.

