

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23262
Docket Number **MW-23357**

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance of Way Employees**
(**Missouri-Kansas-Texas Railroad Company**)

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

(1) The discipline assessed **Machine Operator Homer Warren, Jr.** for alleged insubordination was without just or sufficient cause and on the basis of unproven charges (System File **100-163/2579-23**).

(2) Machine Operator Homer Warren, Jr. shall have his record cleared of the charge leveled against him."

OPINION OF BOARD: **Claimant was suspended** from service by the Carrier for a period of ten days for failure to report to work at the designated **time** on a Saturday morning. Such suspension was deferred for a period of twelve months, meaning that the claimant would not be required to serve the deferred **suspension** unless within the twelve-month period, he were found guilty of additional rule violations. The entry of the deferred **suspension** does **remain** on the claimant's record.

The claimant alleges that he did not hear the foreman issue **instructions** to work on Saturday **and** since Saturday **is** not normally a working day, he did not report for work. A review of the pleadings and the testimony indicates that the claimant relies upon his **own** testimony as well as the supporting testimony of one employe who indicated **that** when the foreman gave him instructions, he said that the **employees** were through for the day and could go **home**. **He** did not, at that **same time**, instruct them to report to work at 8:00 the following morning. This **witness** also **stated** that it was possible that the claimant had not heard the subsequent instructions to report the following morning because he might have been a distance away from the foreman.

The foreman testified that he instructed all the **employees** to report the following morning, including the claimant, **and** another employe testified that the claimant was present when the foreman gave **his** instructions to report to work the following morning. The employe supporting the **claimant's** contention indicated that he could not **state** that the **claimant was** not instructed to work because there was some **discussion** by the **employees** of the instructions they had received. **He** also **stated** that it **was normal** for the employee to ask the supervisor for **instructions**.

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Under the circumstances, there is ample evidence to conclude that the **instructions** were **issued** to all **employees**, including the claimant, and that, therefore, under these circumstances, the discipline which was imposed **is** reasonable.

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 15th day of April 1981.

