

--

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23267
Docket Number MW-23403

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employes**
(**sand Springs Railway Company**

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

(1) The suspension of three (3) days imposed upon Trackman Robert Huntley was without just and sufficient cause and was wholly disproportionate to the offense with which charged (System File S-85).

(2) Trackman Robert Huntley shall be compensated for all wage loss suffered and his record shall be cleared of the charge leveled against him."

OPINION OF BOARD: The claimant was suspended for three days for failure to appear at a designated spot at the appointed time to be picked up by his supervisor. The claimant was employed as a track Inspector and alleges that he was at the appointed spot except that since the supervisor was not there and because he required the services of a bathroom, he went across the street to use the bathroom facilities and was just getting back to the appointed spot when the supervisor drove by, and he could not attract his attention.

However, the investigation of the incident revealed many discrepancies in the statement of the claimant. The service station in question was not across the street, but some five blocks away, and the service station attendant indicated that the claimant was at the service station at 1:00, not subsequent to 1:30 as indicated by the claimant. In light of the many discrepancies, it is clearly appropriate that the Carrier discipline the claimant. With respect to the extent of the discipline, we are not inclined to substitute the judgment of the Board for that of the Carrier under the facts in this case.

We have noted the portion of Award 10582, which was cited by the Organization in its brief; however, in that award, it was held that the Carrier's action was arbitrary, unjust, and without foundation in law or fact because the facts were substantially undisputed and did not establish any violation or insubordination. In the matter before us, the facts are in dispute. We find that a violation has been established by the Carrier and, therefore, will not alter the remedy which has been 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. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.

