

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 23379
Docket Number MW-23245**

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 thirty day suspension imposed upon Trackman Roosevelt White for alleged insubordination was without just and sufficient cause and on the basis of unproven and disproven charges (system File TRRA 1978-38).

(2) Trackman Roosevelt White be compensated for all wage loss suffered."

OPINION OF BOARD: On August 10, 1978, Claimant, a track laborer, was suspended from service at or about 11:30 a.m. for failure to carry out instructions at a more satisfactory rate, thereby being insubordinate. Following a hearing held on August 17, 1978, Claimant was notified by letter dated September 5, 1978 that he was suspended for 30 days without pay. Further hearing was conducted on October 26, 1978 to hear a witness for Claimant, who was unavailable at the earlier hearing.

The evidence adduced at the investigative hearing affords ample probative showing that the charged violation occurred and the initial trier of fact so found. While there was countervailing evidence also, it is well-settled that where probative evidence exists for a finding, the Board will not substitute its judgment for the initial trier of fact. See Second Division Award 7325 (McBrearty), and Third Division Awards there cited.

A violation having been established, we confront the question of the propriety of the discipline assessed. As was concluded in Third Division Award 22915 (Kasher), with which we concur, we conclude that the discipline administered to Claimant was unduly harsh and will reduce the 30-day suspension to a 15-day suspension.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

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

