

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23464**
Docket Number **m-23154**

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Kansas City Southern Railway Company)

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

(1) The suspension of five (5) days imposed upon **Trackman** Mark Ratt was without just and sufficient cause (Carrier's File 013.31-195).

(2) **Trackman** Mark Ratt shall **now** be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, **Trackman** Mark **Pratt**, after investigation, was suspended for five days for absence without permission on March 23 and **May** 1, 1978. The Organization **contents** that Carrier lacked just and sufficient cause to suspend **Claimant**.

Carrier, on the other hand, asserts that **Claimant** was suspended for being absent from work without permission, in violation of Rule Q. It insists that the suspension issued was justified.

Rule Q states:

"**Employees** must report at the appointed **time**, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with or substitute others in their place without proper authority."

Claimant argues that his absence on March **23, 1978** was due to the fact that his **carpool** did not arrive to take him to work. Claimant testified **that he** did not contact his **Foreman**, Mr. Woodard, to notify him of **Claimant's** absence, since the Foreman would have been "already half way to his job" by the **time** the **carpool** mixup was apparent.

We find Claimant's absence on March **23rd** to be a clear violation of Rule Q. The record shows no attempt by Claimant to **comply** with Rule Q by contacting a "proper authority" to get **permission** to be absent from work. It was not enough for Claimant to surmise that Mr. Woodard would be unreachable by telephone. Claimant should have tried to reach Mr. **Woodard** or another person in "authority". The Agreement requires such an effort by an **employee**. X-1

We also decline to excuse Claimant's absence on the basis of the **car-pool**. All **employees** are expected to present themselves for work at the **time** and place assigned. Lateness or absence are not condoned merely because other

employees may be partially at fault. When it became clear that the **carpool** would not arrive in **time** for Claimant to get to work, Claimant should have sought other means of transportation and contacted his superiors to inform them of any expected delays.

Claimant asserts that he was late for work on May 1, 1978 rather **than** absent **from** work as indicated in Warning Letter No. 2 (Carrier's Exhibit No. 2). The parties have presented no evidence to **indicate** that lateness or absence are treated differently **under** Rule Q, nor would a reading of Rule Q so indicate. Accordingly, despite the fact that Claimant did eventually present himself for work on **May** 1, 1978, the Carrier was within its rights to issue a warning letter for the May 1st violation of Rule Q.

X-2
Thus, Claimant is guilty as charged. The **final** question is the appropriate discipline.

X-3
Lateness and absenteeism are serious problems. To be sure, any Carrier is fully within its rights to take corrective **action**, disciplinary or otherwise, to insure that **employees** keep a proper **work** schedule.

X-4
However, we are persuaded **that** the imposition of a **5-day** suspension here is unreasonable and excessive. Underlying our conclusion is the testimony **of Woodard**, which was unrefuted, that **an** investigation does not normally take place **until** the third Rule Q letter.

Here, there was but two letters issued. For this reason, we are persuaded that a **two-day** suspension is appropriate and we do so find.

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 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.

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By Order of Third Division

Attest: 
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.