

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **23605**
Docket Number **MW-23810**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way Employee
(Missouri-Kansas-Texas Railroad Company

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

(1) The suspension of sixty (60) days imposed upon Track laborer B. J. **Turnbull** was without just and sufficient cause and on **the** basis of unproven charges (System File **300-315/2579-23**).

(2) The claimant's record be cleared and reimbursement be made **for all** wage loss suffered."

OPINION OF BOARD: The **claimant** was terminated from service for an asserted unauthorized absence from work.

During the appellate procedure on the property, the dismissal frw service **was** reduced to a sixty (60) day actual suspension.

It is not questioned that the Employee left the work site prior to the end of the shift on June **5, 1977**. He testified that he left because his brother received a telephone call **stating** this his (the brother's) baby had fallen at the baby sitter's home and injured her head. The Claimant testified that the only way the brother could get home **was** for him (the Claimant) to take him, because they had driven to work together,

When the Claimant was asked if appropriate permission had been granted to do so, he stated that the Carrier Representative "... didn't say either way whether we could **stay** or go." **That** statement was made after the Claimant testified that the brother did advise the Carrier that the **Claimant** would have to drive the father of the child home, because the **Claimant's** car was not insured, and the Claimant was not going to let anyone drive his car. **The** Supervisor did state that he was going to bring the truck to **Denison** that night, and if anyone wanted to, they could obtain a ride from him in that manner.

The Employee asserts that he was neither insubordinate nor did he leave work without permission on the day in question because, although he did not **remain** at work, "he was not instructed to do so."

The Supervisor **was**, to **some** extent, evasive in his answers at the investigation concerning permission, because in answers to certain inquiries he **kept** referring to the fact that the employees who stayed at the job site could obtain a ride in the truck. However, he did testify directly that the Claimant did not have **permission** to leave, regardless of the fact that the Claimant was not going to permit the brother to drive **his** truck.

Both sides have cited prior Awards as precedent to their contentions concerning absence from duty and permission to leave in direct or indirect terms. In the final analysis, each case must be reviewed and decided upon its own individual merits.

Under this record, we see certain extenuating **circumstances** which were obviously also apparent to the Carrier when the dismissal was reduced to a 60 day suspension. Nonetheless, the Employee was placed in a position of priorities between his brother and his employer, and it is rather obvious that he chose to favor the brother; whereas, even without engaging in hindsight and second-guessing, other alternatives were available.

Under all of the circumstances, we do find a degree of insubordination inherent in the Employee's action, however, we question that under all of the circumstances, a full two months of suspension was warranted. Accordingly, we will only approve so much of the suspension as provided for thirty (30) days,

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 10th day of March 1982.