

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23822
Docket Number MW-23703

Paul C. Carter, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast **Line** Railroad Company

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

(1) The dismissal of **Trackman** R. Duncan was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File **C-4(13)-RD/12-39(79-23)** J).

(2) **Trackman** R. Duncan shall be reinstated with seniority and all other rights **unimpaired**, his personal record be cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was employed as a **trackman**. In September, 1978, he was assigned to Force 8598, on Carrier's Savannah Division. The Carrier contends that Claimant did not report for **work** on September 7, 1978, and did not advise his **Foreman** or Supervisor of his whereabouts.

The Organization **contends that Claimant** suffered a back injury on September 6, 1978, while attempting to push a dolly loaded with **cross ties**; that on September 7, 1978, Claimant was unable to work; that he telephoned the **Yardmaster** at Savannah Yard, informed the Yardmaster of his disability, and requested that the Yardmaster **make** such information **known** to Claimant's Supervisors, the Foreman and the **Roadmaster**, who reported for **work** at Savannah Yard, and that during the following week he repeated the telephone calls to the Yardmaster. The Organization also states that Claimant's wife made a telephone call to the Division Engineer and submitted an insurance claim form to that office.

On November 16, 1978, the Roadmaster wrote Claimant:

"Your Foreman R. J. **Love** advised me on or about October 2 that you had been absent from your assignment as **Trackman** on Force 8598 since close of **work** day September 6, 1978 and you had not advised him the reason for your absence nor had you requested permission to be off.

On November 2, 1978 Div. Engr. **Harrell** filled out a Disability Claim Form for you on which you claimed an injury on September 6, 1978. In investigating this injury you furnished a statement dated November 9, 1978 claiming a back injury while working with **Trackman** Ray; also indicating that you reported this occurrence to Foreman **love**. My further investigation does not substantiate your claim.

For your responsibility in connection with the **above** you are charged with violation of Rule **17b** and **17c** of the Working Agreement between **Seaboard** Coastline Railroad and the Maintenance of Way Employees, dated July 1, **1968**, in that you were absent **from** your assignment without permission and failed to notify your Foreman or other official of the company of your need to be absent. You are also charged with violation of Rule 10 of the Safety Rules for **Engr.** and **MofW** Employees, effective **September** 1, 1967, account failure to promptly report an injury to your supervisor. You are also charged with violation of that part of Rule **18** of the Safety Rules for **Engr.** and **MofW** Employees, effective September 1, **1967**, having to do with making false statements or concealing information on matters under investigation.

Division Engineer C. R. **Harrell** will arrange for a hearing in connection with these charges."

Hearing was held on **November 27, 1978**, and Claimant was dismissed from service on December **4, 1978**.

Rule 17(c) of the applicable Agreement reads:

"(c) An employee off duty account of sickness or for any other good cause must notify his **for-** or the proper officer as early as possible. In case of sickness or injury, they will not be **required** to secure leave of absence to protect their seniority, but may be required to **furnish** proof of disability."

In the investigation the **Claimant** testified that on September **6, 1978**, while attempting to push a dolly loaded with ties; he injured his back; that he told **Trackman** Ray, with whom he was working of his **injury**, and on the same date he told his Foreman of the injury, with no response from the Foreman, but he was sure that the Foreman heard **him**. He also testified that on the morning of **September 7** he called the **yardmaster** at Savannah Yard and informed him of his disability and requested the Yardmaster make such **information known** to Claimant's Supervisors, the Foreman and Roadmaster who report for work at Savannah Yard.

The **Roadmaster** testified that on September **7** he did receive information from the **Yardmaster** that Claimant had called in sick. The Claimant stated that the reason he called the Yardmaster was that he did not have the telephone numbers of the **For-** or the Roadmaster. The Foreman stated that no report was made to him by the **Claimant** of an alleged injury on September **6, 1978**, and **that the** Yardmaster did not notify him of the call from the Claimant on September **7, 1978**. **Trackman** Ray, with whom Claimant said he was working, testified that Claimant said nothing to him about an alleged injury.

There are *issues* in the case that we are unable to reconcile, such as reporting the **personal injury** to the for- on September 6. As Claimant was allegedly absent because of personal injury, we consider Rule 17(c) rather than Rule 17(b) to be applicable. We do not consider that Claimant was attempting to mislead anyone when he reported his absence to the **Yardmaster's** office, with the request that his For- and Roadmaster be **notified**, although he should have reported direct to the Foreman or **Roadmaster**. Discipline Was warranted, but, under the circumstances, we consider that pe-ent dismissal was excessive. We will award that **Claimant** be restored to the service with seniority unimpaired, but without any **compensation** for time lost while out of the service, provided that Claimant can pass physical examination that may be required by Carrier.

FINDINGS: The Third **Division** of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

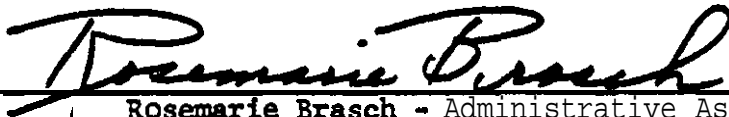
Claim **sustained in** accordance with **the Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.

