

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 24030
Docket Number MW-23935

T. Page Sharp, 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 suspension of five (5) days imposed upon **Trackman** Abraham **Means** for alleged violation of Rule 17(b) was without just and **sufficient** cause, unwarranted, arbitrary and capricious (System File C-4(13-AM/12-39 (79-37) J).

(2) **Trackman** Abraham **Means** shall be compensated for all wage loss suffered during the five day suspension imposed **upon** him and his personal record shall be cleared of the charge leveled against him."

OPINION OF BOARD: Claimant is a **trackman** for the Carrier. **He** was suspended for five days for missing **a** day of **work** and for failing to **notify** Carrier so as to obtain permission for the absence. **He** was charged and found violative of Rule **17(b)** of **the** relevant Agreement. That Rule reads:

"(b) An employee desiring to be absent **from** service **must** obtain **permission** from his foreman or the proper officer. **In case** an employee is unavoidably kept from work, he must be able to **furnish** proof of his inability to notify **his** foreman or proper officer."

At the investigation Claimant testified that on the night before his day of absence he had suffered from severe throat pains, high temperature, and was **staggering** in his walk. **On** the day in question he testified that he was too sick to work. A **Roadmaster** of the Carrier to **whom** Claimant reported on the day after his absence testified that Claimant told him that his sinuses were hurting and that he did not went to **work in** the rain. **Testimony** established that it was raining on the day of his absence. Claimant's Foreman testified that Claimant had only told him about his sinus problem and **had** not mentioned any other ailments.

Alleging that Claimant was too ill to work, Petitioner urges the Board to find that notice for the absence should have **come under** Rule **17(c)** of the relevant Agreement. That Rule reads:

"(c) An employee off duty account of sickness or for any other good cause must notify his foreman or the proper officer as early as possible. In case of **sick-**
ness 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."

The transcript of the investigation reveals that **Claimant** stated to two Carrier officials after his return to work that his absence on March 6 was due to painful sinuses. Fifteen days later at the investigation he described his other symptoms. He explained at the investigation that he had chronic sinus problems and that he **worked** when they hurt. He stated that if he were absent each day his sinuses hurt, he would seldom work. He further testified that he had told both the Foreman and the Roadmaster about his sore throat and his fever. Given this contradictory testimony between the Claimant and the Carrier witnesses, the Board must accept the findings of the investigating officer who **found** a violation of Rule 17(b) as far as a duty to notify the Carrier before the absence.

Claimant testified that he is familiar with the notice duties placed on him by the rules. He testified that on the day **in** question his neighbors were absent, that he felt **too** bad to drive, that his children were in school, that his wife could not drive, and that neither he nor his neighbors had a telephone. These facts **were** offered to relieve him of **his** duty to notify the Carrier of his impending absence. He could have notified the Carrier if he was able to get **word** to the Carrier's tool house located approximately a half mile from his **home**.

Claimant has a positive duty under Rule 17(b) to notify the Carrier. The Rule is tempered to excuse lack of notice if an **employee** is unable to comply. The Claimant has offered myriad reasons to excuse his failure to notify. However, the circumstances of these reasons are such that they are unlikely to change and if such facts are allowed to excuse noncompliance with the Rule, Claimant would in effect **be** excused from his duty. Based upon the facts as developed **in** the transcript, the **Board** finds that Claimant derelict in his duty under Rule **17(b)**.

The discipline imposed by the Carrier **was** lenient. Based upon the facts developed in the record below the Board finds that the imposition of such discipline was not arbitrary or capricious and will remain undisturbed.

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.

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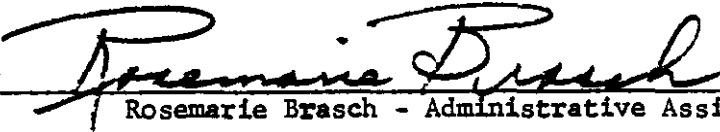
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Claimdenied.

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 15th day of November 1982.