

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24074
Docket Number MW-24316

Tedford E. Schoonover, 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 Willie Tolbert for alleged violation of 'Rule 17-b of the Agreement between the Seaboard Coast Line Railroad and the Brotherhood of Maintenance of Way Employees, and Rule 18 of the Safety Rules and General Rule 2 of the Safety Rules for Engineering and Maintenance of Way Employees' was improper, arbitrary, capricious, unwarranted and on the basis of unproven charges (System File 37-SCL-80-109/12-39(80-28)G1).

(2) The claimant's record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At approximately 1:45 AM on February 19, 1980, claimant received a telephone call at his home from his Section Foreman instructing him to report immediately for duty at a derailment site. The main line of the railroad was blocked and it was urgent to repair the damage as soon as possible. Claimant advised his foreman he would report as directed. He failed to do so and did not report for work until the start of his regular shift at 7:30 AM.

Shortly after the first call the Section Foreman made a second call to the claimant's home which was answered by claimant's wife. There is some conflict as to her reply. The foreman testified that she advised claimant had already gone to work. The claimant says she advised he was out in the yard working with his car. Claimant's defense is that he could not get his car started; that he tried to call the foreman but got no reply. He testified he also tried to call another member of the section crew who was in a car pool but was unable to get an answer. He admits not trying to call any other officer of the Carrier, saying he was so disgusted with his car and did not think about it.

Because of failure to report for work as directed he was charged with the following rules violations:

Rule 17-b of the Agreement between the Seaboard Coast Line Railroad Company and the Brotherhood of Maintenance of Way Employees which reads:

"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."

Rule 18 of the Safety Rules for Engineering and Maintenance of Way **Employees** which reads:

"Insubordination will **subject** the offender to **dismissal**."

and

General Rule 2 of the Safety Rules for Engineering and Maintenance of Way **Employees** which reads:

"**Obedience** to the rules is essential to Safety."

Following investigation as required by the rules **claimant** was **assessed** **discipline** of suspension from duty for five **days**.

Rule 17-b is clear in providing that when an employee is **unavoidably** kept from work he must be able to furnish proof of **inability** to notify his foreman or proper officer. **In this case** it is understandable that **claimant** may not have been able to reach his **foreman** by phone who **had** probably already gone to deal with the emergency. **Claimant** **did not, however,** make any **further** effort to get word of his **inability** to report to work as directed. **He** **did not try to** contact anyone at **Rockport** although he knew the telephone number at that office and **had called** it before. **His** answer **when** questioned on this point, was that he **was** disgusted with his car and **did not** think about it. **This is hardly** a responsible or satisfactory answer for a regular employee whose **services** were needed in an emergency **situation**. He said his car problem **was** due to a defective battery. **This** was not the first **trouble** he had with getting his car started; it had given the **same** kind of trouble **prior** to this occasion. Finally, later **in** the week, **claimant** purchased a new **battery** to correct the problem. Recognizing the necessity of reliable **transportation** to get to work on a dependable basis **makes** it a principal requirement that **such** a critical item **as** a functioning battery be given priority attention; not allowed to go unattended as was done in this case.

The **clear** fact is that **claimant** violated Rule 17-b by failing to **furnish** proof of **his** inability to notify his foreman **that** he was **unavoidably** kept from work and oversight in failing to notify the **Rockport** office. **Had** he done so other help **could have** been secured to assist with the emergency work. **As** it was, the crew was short handed and this caused violations of the safety rules referred to. Rule 18 refers to **insubordination** which is **applicable** to the extent that the **employee** failed to **report as** directed without any acceptable **explanation** of such failure.

In **view** of our review of the **circumstances** as discussed herein, it is the opinion of the Board **that** the discipline was not **unreasonable** and we therefore, **deny the claim**.

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 ~~Employes~~ involved in this dispute are reapedively ~~Carrier~~ and ~~Employes~~ 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 this Division of the ~~Adjustment Board~~ has jurisdiction over the dispute involved herein; and

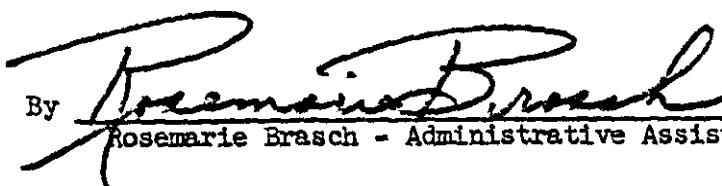
That the Agreement was not violated.

A W A R D

Claim denied.

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 14th day of December 1982.