

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24118
Docket Number MW-24166

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Missouri Pacific Railroad Company

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

(1) **The** dismissal of **Trackman** S. E. Johnson for being absent from duty without permission on January 24, 1980 was excessive and wholly disproportionate to the offense with which charged (Carrier's File **s 310-336**).

(2) **Trackman** S. E. Johnson shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered including holiday pay."

OPINION OF BOARD: Claimant entered service on **September 17, 1974**. On February 5, 1980 Claimant was notified to report for formal investigation to ascertain his responsibility, if any, with respect to his being absent from his duties as **trackman** on Gang 5495 at **Troup, Texas** on January 24, 1980 without proper permission and/or authority. On February 6, 1980 Claimant was notified that he had been found guilty as charged and that he was dismissed from service.

The accepted norm in discipline cases in the Railroad Industry is **that** the rule of substantial evidence be applied. Substantial evidence has been **defined** as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (**Consol. Ed. vs. Labor Bd. 305 U.W. 197, 225**). A review of the record in this case before the Board indicates that the requirements of this rule have been met.

The only issue, therefore, before this Board in the instant case is the determination of whether the discipline assessed was reasonable. This Board has held the **position, in** its acceptance of the principle of progressive discipline, that service record **can play** a role in establishing an equitable **relationship** between infraction and **discipline** (Second Division 2066 and 9281 **inter alia**). The poor prior service record of Claimant was alluded to in **the investigative** hearing by Roadmaster Wright and this record was explicitly referred to during **the appeals on** the **property** by **Carrier Director** of Labor Relations, thus **forming part** of the permanent record related to this case prior to **ex parte** submissions. In view of this, and the preponderance of substantial evidence on record to substantiate Claimant's guilt as this relates to the January 24, 1980 infraction, the Board will not disturb Carrier's determination in this case.

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.

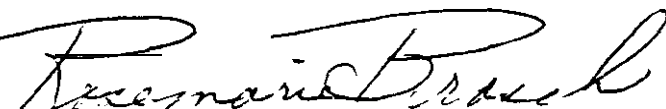
A W A R D

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 January 1983.

