

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24133
Docket Number MW-23820

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Kansas city Southern Railway Company

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

(1) The five (5) day suspension imposed upon Trackman J. L. Brewer, Jr. for alleged violation of 'Rule Q' was without just and sufficient cause and on the basis of unproven charges (Carrier File 013.31-216).

(2) The sixty (60) day suspension imposed upon Trackman J. L. Brewer, Jr. for alleged 'insubordination' was without just and sufficient cause and on the basis of unproven and disproven charges.

(3) Trackman J. L. Brewer, Jr. shall be compensated for all wage loss suffered from October 24, 1979 to January 2, 1980."

OPINION OF BOARD: Claimant appeals from two disciplinary actions; the first resulting in a five-day suspension and the second a sixty-day suspension

In the first instance, the claimant was discovered away from his assigned duty post where he was to install rail anchors and spike up joints. He was in the company bus where he claims that he was cleaning up the bus after completing his work assignment..

In the second instance, the claimant was initially dismissed by the Assistant Roadmaster because of insubordination by the claimant in first refusing to follow instructions, then speaking disrespectfully to and threatening the Assistant Roadmaster. The claimant denies these allegations and alleges that the Assistant Roadmaster used abusive language to him and threatened him.

In both instances, there is conflicting testimony. —

The Petitioner has cited numerous Awards requiring the Carrier to develop by appropriate evidence at the hearing the facts necessary to justify the Carrier's disciplinary activities.

The Board agrees with this contention. The burden of proof in disciplinary cases is on the Carrier.

The **Board** has examined the record of the hearing in each instance and concludes that the **Carrier** did present evidence which, if believed, supports the disciplinary action of the **Carrier**. It is noted that the disciplinary action in the second instance was reduced from dismissal to a **sixty-day** suspension.

The Board is aware that, **in** each instance, the **claimant** provided evidence which conflicts with the evidence upon which the **Carrier** made its decisions.

It has long been established that where there is conflicting testimony that the **Board** is not in a position **to** resolve such conflict and **will** support a decision made upon sufficient evidence unless it determines that the Carrier's action constituted an abuse of discretion. A review of the **transcript** does **not** support a claim of abuse of discretion.

The Carrier alleges that the **first** disciplinary action was **not** properly before this Board because it was not **properly** appealed. In light of our decision to support the Carrier's action in the first instance, it is not necessary to address the matter further.

For the reasons cited herein, the claims will be denied.

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
Rosemarie Brasch - Administrative Assistant

Dated at **Chicago**, Illinois, this 27th day of January 1983.

