

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24241  
Docket Number MW-23834

Carlton R. Sickles, Referee

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

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

(1) **The** discipline assessed **Trackman Willie Brown** was without just and sufficient cause and on the basis of **unproven** and disproven charges (System File S 247-5862).

(2) **Trackman Willie Brown** shall be compensated for all wage loss suffered, including holiday and **overtime** pay, during the period of his **suspension** (January 18, 1979 through April 16, 1979)."

OPINION OF BOARD: The issue **is** whether a disciplinary action **involving** a suspension for ninety days should be upheld. The action is based **upon** the alleged **insubordination, including** the threat of bodily harm. by the Claimant against his supervisor.

The Board finds that the alleged activity of the **Claimant**, if established, would support the findings of **insubordination** and **justify a ninety-day** suspension of the **Claimant**.

**This Board** is, therefore, once again being called upon to review the **testimony** in a **disciplinary** proceeding to **determine** whether there is **sufficient** basis for the Carrier to have concluded that the Claimant **did** perform the alleged activities and is, therefore, properly found guilty of the charges. There is conflicting **evidence with two** witnesses, including the original charging party, **testifying** to the activities of the Claimant and a **number** of witnesses disputing these facts.

The **Board finds** that there is **sufficient** testimony which, if believed by the **Hearing** Officer, establishes the charges against the Claimant. Once again, the Board is not in a position to evaluate the **testimony** when there is conflicting **testimony** because it **is** not in a **position** to be physically present in **order** to **observe the demeanor** of the parties and **some way make an independent judgment as** to the degree of probity of the witnesses interviewed at the hearing. Since the Board has concluded that there is sufficient **testimony**, if believed, to support the charges, the Board **will** uphold the decision **of** the Carrier and 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 **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 March 1983.

