

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24385
Docket Number MW-24484

William G. Caples, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE:

{Burlington Northern Inc. (former St. Louis-San Francisco
(Railway Company)

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

(1) The **two** (2) weeks of suspension imposed upon **Trackman M. A. Beckley** for 'failure to protect **overtime** work on Saturday, October 11, 1980' was excessive and wholly disproportionate to the charge leveled against him (System File B-2001).

(2) The **claimant** shell be **compensated** for all wage loss suffered."

OPINION OF BOARD: This docket involved the same parties and a similar factual situation in **Award No. 24384**.

Claimant prior to his suspension was employed as a **Trackman** by the Carrier **laying** rail in **Arkansas**. He was assigned to a gang and was scheduled to work **Monday** through Friday, with Saturday and Sunday designated as rest days. He was instructed on Friday, October 10, 1980 to report for overtime work on Saturday, October 11, 1980, a designated **rest** day, to repair track **damaged** by a derailment. He did not report for duty on **Saturday**; he did not request permission to be absent on Saturday and he failed to protect the overtime work **assignment**. When he reported for work the following Monday he was given a two (2) week suspension. This action was requested for review alleging a two-week suspension was unjust discipline. A **formal investigation** of the matter was held on November 6, 1980 and by letter dated November 12, 1980 the Carrier advised Claimant that as a result thereof the two-week suspension was maintained as a violation of Rule 189 had been found by the Carrier.

There are two aspects to this matter, (1) did the Carrier present sufficient probative evidence to sustain its burden of proof as the charging party and, if so, (2) was the discipline consistent with the **charge** levied or excessive and wholly disproportionate to the charge?

It is our finding that the evidence of the violation was clearly established by the evidence at the investigation. The evidence showed Claimant understood the instruction and did not request permission to be absent. If, as was alleged, the **Claimant** had prior personal business it was incumbent upon him to advise his foremen and seek to be excused to be absent. He didn't. As stated in Second Division Award 8238:

"The **employment** relationship demands, of **necessity**, and **particularly** in this **critical** industry that **employees** must diligently **perform the** work for which they **are** hired. If any employee chooses to determine unilaterally, his employment schedule, he does so at his peril."

There **are numerous** decisions of this and other divisions **of** this Board where the Board has refused to substitute its judgment **for** that of the Carrier unless it is capricious, arbitrary or excessive. There is no evidence of that **nature** in this **case**. The Carrier judgment will **therefor** be **and** is sustained.

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 26th day of May 1983.

