

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William G. Caples, Referee

Award Number **24386**
Docket Number **MW-24533**

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Inc. (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** D. R. **Brown** for 'failure to protect **overtime work** on Saturday, October 11, **1980**, as instructed' was wholly disproportionate to the charge leveled against **him** (System File **B-1957**).

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

OPINION OF BOARD: **This** docket involved the **same** parties and a similar factual situation in Awards Nos. **24384 and 24385**.

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 f-1 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 Role **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, i(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 has prior **personal business** it was incumbent upon him to advise his **foreman** 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 that:

That the parties waived oral hearing;

That the **Carrier** and the **Employes** involved **in** this dispute are respectively 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 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**.

