

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24523  
Docket Number MW-24404

Herbert L. Marx, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**  
PARTIES TO DISPUTE: (  
(Seaboard Coast Line Railroad Company

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

(1) The **fourteen** (14) calendar days of suspension imposed upon **Trackman J. L. Morgan** for alleged violation of Agreement Rule '**17(B)**', 'Rule 18 of the Safety Rules **for Engineering** and Maintenance of Way Employees and General Rule 2 of the Safety Rules for Engineering and Maintenance **of Way Employees**' was without just and sufficient cause, unwarranted and an abuse of justice and discretion by the Carrier (System File **C-4(13)-JLM/12-39(80-37) G**).

(2) The claimant's **record** be cleared and he shall be compensated for all wage loss suffered during the period **March 24, 1980** through April 6, 1980."

OPINION OF BOARD: **Following** an investigative hearing conducted in a fair and proper manner, Claimant. was assessed a **14-day** disciplinary suspension for his failure to report for **work when** called at **1:30 a.m.** February 19, 1980 in connection with a derailment.

The Carrier determined that the Claimant was guilty of violating the following rules:

Rule 17(b) - From Working Agreement between **SCL** and **BMWE**

"(b) An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from **work**, he must be able to furnish proof of his inability to notify his foreman or proper officer."

Rule 2 - General Notice - From Safety Rules for **Engineering** and Maintenance of Way **Employees**.

"2. Obedience to the rules is essential to Safety."

Rule 18 - From Safety Rules for Engineering and Maintenance of Way **Employees**.

"18. Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

The charges are based on the record of the investigative hearing, in which a Carrier Foreman was questioned concerning his call to the Claimant. The Foreman's testimony was as follows:

**Q.** When you were notified of this derailment, did you contact Mr. Morgan?

A. Yes sir.

**Q.** And what did he tell you?

A. Told me his driver's license had been revoked.

**Q.** Were you aware of that prior to this time?

A. Yes sir.

**Q.** How long ago had it been revoked?

A. Ever since **he's** been working for me.'

The Carrier's case here **is** primarily one of an **employee's** failure to report for duty when called (i.e., unexcused absence) -- rather **than** insubordination. According to the Foreman's testimony, the Claimant **stated** he would not report for **work** based **solely** on his inability to drive his car at the time. There **is no inference** that the Foreman gave "**permission**" for the Claimant to **be** absent. **On** the other hand, the Board detects no direct refusal to obey a proper order, which **would** be the only basis on which a charge of **insubordination** could be sustained here.

As brought out at the investigative hearing, however, the **Claimant** clearly made **no** effort to find an alternative way to report for **work** when called. He had good reason to **know** that a fellow employee on **the** same crew **would be** called and might have provided **transportation**, **but the** Claimant did nothing to investigate this possibility or to seek some other means of reporting to **work**.

The Claimant had been given a previous warning concerning Violation of Rule 17 **(b)**". **Once** the Carrier had reached its **conclusion** concerning the incident under review, reliance on the **employee's record** was proper in determining the severity of penalty.

**The** Board finds the **Carrier's** charge of insubordination does not fit the circumstances, but a disciplinary penalty based on violation of Rule 17 **(b)** is proper, insofar as it requires attendance when **an** employee is called to duty unless permission is otherwise granted.

Claim sustained to the extent that the disciplinary penalty shall be reduced to seven days and that the Claimant shall be compensated for wage loss for the remaining seven days.

**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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September, 1983.