

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24636
Docket Number MW-24785

Paul c. carter, Referee

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

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

(1) The dismissal of **Trackman** Larry Barber for alleged "violation of Safety Rule 18 of the Book of Safety Rules dealing with insubordination when you did not follow **Foreman** Hale's instructions to work on Saturday, February 28 and Sunday, March 1, 1981" was without just and sufficient cause (System File 37-SCL-81-14/12-39(81-27) G).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a **trackman**, assigned to Section 7359, headquartered at Ben Hill, Georgia. Due to the necessity, because of operating conditions, to repair a road crossing on Sunday, March 1, 1981, Claimant was instructed on February 25, 1981, that it would be necessary for him to **work** on Sunday, March 1, 1981. Also, on Friday, February 27, 1981, Claimant was instructed to work on Saturday, February 28, 1981, to assist in unloading crossties for the Timbering and Surfacing gang working in that **area**. Claimant did not work on February 28 or March 1, 1981, and on March 10, 1981, he was charged:

"On Wednesday, February 25, 1981, Ben Hill Section No. 7359 was notified that the road crossing at Rock Spur, Mile Post NB 833, **would** have to be reworked on Sunday, March 1, 1981, due to heavy traffic to and from asphalt plant and rock quarry. Also, on Friday, February 27, 1981, Ben **Hill** Section was notified that it would be necessary to work Saturday, February 28, 1981, to unload **cross-**ties for T&S Gang.

My records indicate that you were instructed by Foreman A. G. Hale to report to **work** Saturday, February 28, and Sunday, March 1, 1981. You did not report to work on Saturday, February 28, or Sunday, March 1, 1981.

'Account your failure to report to work on Saturday, February 28, or Sunday, March 1, 1981, and not having a valid reason for not reporting, you were held out of service from the Seaboard Coast Line Railroad and informed that you were being held out of service for violation of Safety Rule 18 reading in part: '...insubordination . . . will subject the offender to dismissal.'

This is to advise you that a hearing will be held in the **office** of the Division Engineer, 1590 Marietta Boulevard, **N.W.**, at **10:00** A.M. on Friday, March 20, 1981, at which time you will be present to answer the charge.

You will be represented by the duly accredited representative of the employees, and you may have present any witnesses you desire who have knowledge of this matter. It **will** be your responsibility, however, to arrange for their presence. Your personal record will be subject to review in the hearing.'

The charge was issued by the Roadmaster. The investigation was conducted as scheduled. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that the investigation was conducted in a fair and impartial manner, and none of Claimant's substantive procedural rights was violated.

The investigation substantiates that Claimant was instructed by his foreman to work on Saturday, February 28, and Sunday, March 1, 1981. Claimant contended that he did report on Saturday, February 28, 1981, but due to transportation difficulties, using public transportation, he was unable to reach the work headquarters until after the gang had departed. He contended that the same condition prevailed on Sunday, March 1, 1981.

Claimant's foreman testified that Claimant understood that he was to work on the Saturday and Sunday involved, and that Claimant informed him that "he was not coming in, that he would bring me a doctor's excuse." Claimant denied having made such a statement to the foreman, but acknowledged that the foreman informed him that he would have to work on the Saturday and Sunday involved.

Assuming that Claimant was dependent upon public transportation, it was his responsibility to report for work on time on the Saturday and Sunday, which he clearly did not do. There was substantial evidence in support of the charge and discipline was warranted. His actions in the present case, when considered with his prior record, which shows one **30-day** suspension for refusing to perform work clearing the main line when instructed by his foreman, and four letters of caution concerning absences without permission, justified the Carrier in imposing the discipline that it did.

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 **Employee** 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984