

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25140
Docket Number MW-23980

Wesley A. Wildman, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation
(Former Lehigh Valley Railroad Company)

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

(1) The thirty (30) day suspension imposed upon **Trackman James M. Jackson** for allegedly leaving his assignment without proper authority was without **just** and **sufficient** cause and on the basis of unproven and disproven charges [System Locket **LV-175**].

(2) **Trackman James M. Jackson** shall have his service record cleared of the charges and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant in this case, a **Trackman**, was assessed a 30-day disciplinary suspension for allegedly leaving his assignment without proper authorization. Claimant's lunch break on the day in question apparently ran from approximately **12:15 p.m.** to **12:45 p.m.** An assistant supervisor, checking on Claimant's work crew at the job site at 1:00 p.m. found a number of **employees**, including Claimant, to be absent. Moreover, the evidence on the record sustains the testimony of Claimant's foreman and assistant supervisor that Claimant did not **work** on his job at any time during the remainder of his shift.

It appears that subsequent to a brief break for lunch starting at approximately **12:15**, Claimant left his jobsite and walked approximately two miles to the supervisor's office to register with the timekeeper so that he would receive pay for the day. Claimant asserts that he had permission from his foreman to make this trip. While there is some uncertainty in the foreman's record testimony as to whether he thought he had given Claimant permission to visit the timekeeper "during lunch" or "after lunch", it seems clear to us from the foreman's own testimony that Claimant either had, or had a right to assume he had, permission to make the trip in question and, thus, to not necessarily be back on his job by 1:00 p.m. on the day in question.

Claimant's rationale for his absence from his job subsequent to 2100 p.m. (the approximate time of his claimed brief return to his job site after registering with the timekeeper) is that he then once again returned to the supervisor's office for the purpose of attempting to resolve alleged "shortages" in his recent paychecks. Claimant asserts that another foreman (under whose jurisdiction he was not working on the afternoon in question! had earlier given permission for this trip and that he (Claimant) had thought he had communicated this fact to his foreman for the day in question. However, there is substantial evidence on the record to indicate that the foreman who had given permission for the trip to the timekeeper through land beyond) the lunch hour was not given sufficient unambiguous communication by Claimant with regard to the 2:00 p.m. absence, was not in fact aware that Claimant had intended a second visit to the supervisor's office and had not, in fact, given any permission for same.

The **30-day** disciplinary suspension levied by Carrier here was based on Carrier's judgment **that** Claimant had no proper cause for being absent from his job at either 1:00 p.m. or, subsequently, at 2:00 p.m. **As** we have found ~~tbdt~~ Claimant was absent from his job at 1:00 **p.m.** with the appropriate knowledge **and** permission of his foreman, but that **Claimant** was at fault in being off the job later on the shift to make his second trip to **the** supervisor's office, we make the additional finding that a **15-day** disciplinary suspension is appropriate here and that any greater penalty would be excessive.

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 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 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. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.