

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25216
Docket Number MW-25191

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Seaboard System Railroad

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

(1) The fifteen (15) days of suspension imposed upon **Trackman J. D. Branson** for alleged 'violation of Rule 17(b) and (c)' was without just and sufficient cause and on the basis of unproven charges [System File **37-SCL-82-16/12-39(82-1093) K3**].

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for **all wage** loss suffered.

OPINION OF BOARD: The Claimant was advised by letter dated February 22, 1982 to attend a hearing on February 26, 1982 for alleged violation of current Agreement Rule 17 (b) and (c). As a result of this hearing the Claimant was found guilty as charged by the Carrier and assessed a fifteen (15) day suspension. After the discipline was appealed by the Organization on property up to and including the highest- Carrier officer designated to hear **such, this** case is now before the Third Division of the National Railroad Adjustment Board.

A review of the record shows that Roadmaster Lee, under whose supervision the Claimant was working on January 19, 1982, testified that the Claimant requested and was granted three (3) days off from that date in order to take care of personal business. These days were January 20, 21 and 22, 1982. The understanding was, according to the **Roadmaster**, that the Claimant would return to cover his assignment on January 25, 1982. The Roadmaster then testified that the Claimant did not contact the Carrier until February 1, 1982. At that time the Claimant made inquiries of the **Roadmaster's** Apprentice with respect to when he could exercise seniority. At that time the Claimant also asked the Apprentice. according to testimony of this witness, if he had thirty days in which to make a roll. The Apprentice himself testified in the hearing that he informed the Claimant that he was not sure and that he advised the Claimant to "call (his) union **man**". At one point in the hearing, when the Claimant is cross-examining this Apprentice, he explicitly acknowledges that the Apprentice gave him this counsel. Later in the hearing the Claimant denies that he was told this. This inconsistency of testimony by the Claimant is compounded by his statement that **he** did not know anything about protecting (his) assignment: after requesting the time off on January 19, 1982. The Claimant then did not contact the Carrier again until February 8, 1982 at which time he again discussed his seniority rights with a second Apprentice working in the **Roadmaster's** office. Upon instructions from this Apprentice the Claimant exercised his seniority rights on February 9, 1982. On February 16, 1982 the **Roadmaster** cited the Claimant for being absent without permission from Monday, January 25, 1982 until February 9, 1982.

The Claimant asserts in his defense that he thought he had thirty (30) days in which to make a roll. This assertion does not explain, however, the conflict of testimony between his alleged misunderstanding about this issue and the explicit testimony of the Roadmaster that "Mr. **Branson** told me he would be back to work without fail on Monday, the **25th...**". By **long** established precedent this Board cannot set itself up as a trier of fact and particularly not to resolve patently conflicting testimony (Third Division Awards 10791, 16281, 21238). So long as the testimony of Carrier's witness is not so devoid of probity that its acceptance would be per se arbitrary and unreasonable the Board may not substitute its judgment in cases of this type. Further, if the Claimant did have some misgivings about this issue he should have sought counsel from his Organization on February 1, 1982 or shortly thereafter. **He** was told to do so. He admits in one place in the record that he was told to do so. And yet he did not seek such counsel.

There is sufficient substantial evidence in the record to warrant conclusion that the Claimant is guilty of the Rule violation with which he is charged. On merits the claim cannot be sustained. The discipline assessed was neither arbitrary, capricious nor unreasonable and this Board will not disturb the Carrier's determination in this matter.

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

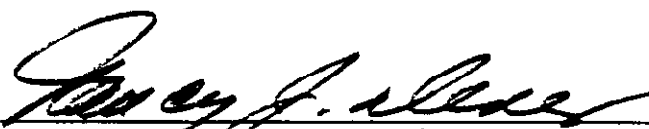
That the Agreement was not violated.

A W A R D

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of **January** 1985.