

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25222
Docket Number MW-25320

James R. Cox, 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 dismissal of **Trackman** W. L. Brown for alleged violation of Agreement Rule 17(b) and Carrier's "**Rule 18**" was without just and sufficient cause and unwarranted [System File C-4(13)-WLB/12-39(82-1127) K3].

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, the charges leveled against him shall be removed from his record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: **Trackman**, W. L. Brown was dismissed from Service for alleged violations of Agreement Rule 17(B), specifying that employees desiring to be absent must obtain permission from their foreman or a proper officer and Rule 18 which mandates that an act of Insubordination will subject the offender to dismissal.

Evidence shows that Claimant lived approximately 45 miles from **Eutawville**, South **Carolina**, where he reported to work. Because of operational difficulties with his automobile, he had been riding to and from work with his Section Foreman, Mr. **Ard**. His scheduled starting time was 7:30 A.M. At 6:15 A.M., February 2, 1982, **Ard** phoned Brown, told him that his car wasn't working and asked that they use Brown's car. Brown told **Ard** that he was out of gas and then called the Roadmaster at 6:40 A.M. asking permission to be off that day because his car had "broken down" and he needed to have it worked on. The Roadmaster, who had previously had problems with Brown because of car problems, told him to report to work.

Mr. **Ard** confirmed that while he car pooled with Brown, he had been doing the driving for the last month. **Ard** stated when he phoned Brown that morning, he told him to get gas for his car and to pick him up. **Ard** asked Brown to call back. After 15 minutes, he again telephoned Brown and asked him whether he was coming. Brown told him that he was going to call the Roadmaster. **Ard** then borrowed a relative's car and drove to work arriving at 7:25 A.M. According to **Ard**, Brown had made no mention that his car needed repairs.

The following day, February 3rd, **Ard** stated that Brown told him that he hadn't worked the previous day because of car trouble - specifically an inoperative muffler system.

The Roadmaster received a second call from Brown just after the start of the scheduled shift - at 7:31 A.M. According to the Roadmaster, Brown told him that he couldn't get a ride to work and again asked permission to be off. The Roadmaster stated that Brown said that he was still at home. It was not long after - a few minutes later, that Brown called a third time and was again refused permission to be off. The Roadmaster denied that request telling him that he wanted him on the job and to come to work. The Roadmaster explained that, had not the Claimant had such a poor attendance record, he would have excused him from work that day. Brown had relied upon an inoperative car as a reason for failing to come to work.

Brown contends that when he called ~~the~~ Roadmaster, he explained that he couldn't use his car because it ~~would~~ have been illegal for him to drive it on the road due to the lack of a **functional** exhaust system. He also asserted that, on only one previous occasion, had he asked for permission to be away ~~from~~ work because of an inoperative car. On that occasion, after being denied permission, he **borrowed** his sister-in law's car and came to work. A few months previous to the February incident, in **October** 1981, Claimant had been suspended for 15 days when he failed to follow his foreman's orders to report to work on the basis that he had car trouble.

Claimant Brown admitted that there was taxi service in the area of his home and that he did not try to call either the taxi or any of his friends for a ride. He stated further that he hitchhiked about three miles and that the second time he called the Roadmaster it was from a phone booth. Brown also testified that morning he did drive his car to Ard's house thinking that he would jump the battery and get it started.

The evidence established that Claimant had prior discipline problems associated with attendance difficulties relating to his transportation to work and does not show any attempt by Brown to find an alternate means of getting to work the morning of February 2nd. Moreover, the record shows an inconsistency between Brown's statement that he drove to Ard's house and his claim that he **tried** to hitchhike to work. His testimony is also contradicted by **Ard** who asserted that Brown never told him that his car was inoperable, only that it was out of gas. If it were out of gas he could not have driven to Ard's house as he asserted.

The **Roadmaster** denies that Brown told him he was hitchhiking and says there was no mention that he was out of gas but only that his car was "broken down".

The Board notes the several internal inconsistencies in Claimant's testimony as well as the differences between his version of the incident and the statements of **Ard** and ~~the~~ Roadmaster.

The evidence indicates that Claimant used car trouble as a pretext for failing to **come** to work February 2nd. In view of his previous record, no mitigation of the degree of discipline is warranted.

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.

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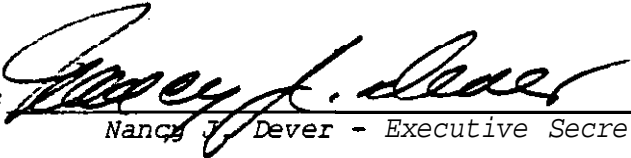
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Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of **Third** Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.