

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25512
Docket Number **MU-24801**

Josef P. **Sirefman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(New Orleans Public Belt Railroad

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

1. The five days of suspension imposed upon Painter C. Wilkerson for alleged insubordination on September 10, 1981 was arbitrary, capricious, unwarranted and on the **basis of** unproven charges.

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

OPINION OF BOARD: Claimant C. Wilkerson, a Painter, was suspended for five days on a charge of insubordination **"by** refusing to assist fellow workers in moving scaffold near the East abutment of the **Huey P. Long** Bridge, on the afternoon of Thursday, September 10, **1981**, as directed by Asst. to Bridge Supervisor, J. **A.Estay**".

A review of the record **before** this Board establishes that Claimant received a fair and impartial hearing. With respect to the conflict in testimony it has been held that **"This** Board functions as a reviewing authority and it cannot substitute its version of the facts for that reached by the trier of facts who heard the testimony, observed the demeanor of the witnesses and, by its proximity was entitled to weigh and evaluate the credibility of witnesses- (Third Division Award 21278). There was substantial evidence in the record to sustain the Carrier's determination to discipline Claimant. In view of the importance of having the scaffolding in place to expedite the start of the next day's work the five day suspension was not 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 **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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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1985.

