

The Third Division consisted of the regular members and in addition Referee Ronald. L. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**  
(The Kansas City Southern Railway Company

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

(1) The ninety (90) days of suspension imposed upon Track Laborer D. R. Williams for alleged unauthorized absence from work on March 1, 1985 and for reporting for duty late on March 12, 1985 was unwarranted and without just and sufficient cause (Carrier's File 013.31-323).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employe** or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant, employed as a Laborer, has been in the Carrier's service since September 12, 1978. The Claimant was suspended from service for ninety (90) days for allegedly being absent from his duty assignment without proper authority on March 1, 1985, and for reporting for work late on March 12, 1985.

The record of this case contains much conflicting testimony concerning: (a) what was said between the Claimant and his Supervisor on February 28, 1985, concerning reporting for work on March 1, 1985; (b) the Claimant's activities on March 1, 1985, and (c) notification, if any, on March 12, 1985, that the Claimant would be late for work. The resolution of this contradictory **testimony**, the assignment of credibility and thereby the determination of the facts is the responsibility of the Hearing Officer. This Board finds no arbitrary or **capricious** judgment on the part of the Hearing Officer. There were reasonable **grounds** upon which to resolve the conflicts in testimony against the Claimant and, accordingly, we will not disturb the finding of guilt.

The two incidents, standing alone, might not be sufficient to warrant the ninety (90) days' suspension. However, in assessing the reasonableness and fairness of the discipline, the Claimant's past record is relevant and a necessary factor to be taken into consideration. This record consists of fifty-three (53) warning letters and suspension totaling thirty-five (35) days for similar Rule Q violations. Given this lengthy record and the circumstances of the immediate instance, **the** discipline was reasonable, fair and not excessive. There is no proper basis to disturb the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 28th day of January 1988.