

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23224
Docket Number MW-23152

Arnold Ordman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

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

(1) The suspension of ten (10) days imposed upon Trackman Freddie Williams was without just and sufficient cause and wholly disproportionate to the offense with which charged [System File TRRA 1978-35].

(2) Trackman Freddie Williams shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a Track Laborer with a Company seniority date of March 28, 1969, was regularly assigned to System Gang No. 4 with the hours 7:30 a.m. to 4:30 p.m. and rest days of Saturday and Sunday. Claimant did not report for work on his regular assignment on Monday, August 14, 1978, and, because of his failure to do so, a hearing was scheduled to determine the facts and Claimant's responsibility, if any.

On October 5, 1978, Claimant was notified by certified mail that upon review of the transcript of hearing, his responsibility for failing to protect his assignment without proper authority was clearly indicated, and that a ten (10) day suspension, beginning October 12, 1978, was assessed against him.

The Brotherhood protests the suspension on the ground that it was without just and sufficient cause and wholly disproportionate to the offense charged. The Brotherhood also invokes Rule 22(a) which reads:

"Except in cases of sickness or personal injury, employee must secure permission before laying off unless unavoidably prevented from doing so."

The claim here made rests on the proposition that Claimant was unavoidably prevented from securing permission before being absent because of mechanical failure of his automobile.

We find upon our review of the record that there was substantial evidence to establish that Claimant failed to protect his assignment on August 14, 1978, and that Claimant failed to produce any probative evidence that his unauthorized absence was due to any legitimate reason. It is unquestioned that the hearing was

conducted in a fair and impartial manner. Moreover, and especially in view of the fact that Claimant was guilty of like offenses in the past, there is no tenable basis for a claim that a ten (10) day suspension was excessive, arbitrary or capricious. We therefore deny the claim. See Third Division Awards 16860 (McGovern); 16816 (Brown); 20549 (Franden).

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 Employee involved in this dispute are respectively Carrier and Employee 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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.

