

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24030  
Docket Number MW-23935

T. Page Sharp, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
                              { Seaboard Coast Line Railroad Company

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

(1) The suspension of five (5) days imposed upon Trackman Abraham Means for alleged violation of Rule 17(b) was without just and sufficient cause, unwarranted, arbitrary and capricious (System File C-4(13-AM/12-39 (79-37) J).

(2) Trackman Abraham Means shall be compensated for all wage loss suffered during the five day suspension imposed upon him and his personal record shall be cleared of the charge leveled against him."

OPINION OF BOARD: Claimant is a trackman for the Carrier. He was suspended for five days for missing a day of work and for failing to notify Carrier so as to obtain permission for the absence. He was charged and found violative of Rule 17(b) of the relevant Agreement. That Rule reads:

"(b) An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer."

At the investigation Claimant testified that on the night before his day of absence he had suffered from severe throat pains, high temperature, and was staggering in his walk. On the day in question he testified that he was too sick to work. A Roadmaster of the Carrier to whom Claimant reported on the day after his absence testified that Claimant told him that his sinuses were hurting and that he did not want to work in the rain. Testimony established that it was raining on the day of his absence. Claimant's Foreman testified that Claimant had only told him about his sinus problem and had not mentioned any other ailments.

Alleging that Claimant was too ill to work, Petitioner urges the Board to find that notice for the absence should have come under Rule 17(c) of the relevant Agreement. That Rule reads:

"(c) An employee off duty account of sickness or for any other good cause must notify his foreman or the proper officer as early as possible. In case of sickness or injury, they will not be required to secure leave of absence to protect their seniority, but may be required to furnish proof of disability."

The transcript of the investigation reveals that Claimant stated to two Carrier officials after his return to work that his absence on March 6 was due to painful sinuses. Fifteen days later at the investigation he described his other symptoms. He explained at the investigation that he had chronic sinus problems and that he worked when they hurt. He stated that if he were absent each day his sinuses hurt, he would seldom work. He further testified that he had told both the Foreman and the Roadmaster about his sore throat and his fever. Given this contradictory testimony between the Claimant and the Carrier witnesses, the Board must accept the findings of the investigating officer who found a violation of Rule 17(b) as far as a duty to notify the Carrier before the absence.

Claimant testified that he is familiar with the notice duties placed on him by the rules. He testified that on the day in question his neighbors were absent, that he felt too bad to drive, that his children were in school, that his wife could not drive, and that neither he nor his neighbors had a telephone. These facts were offered to relieve him of his duty to notify the Carrier of his impending absence. He could have notified the Carrier if he was able to get word to the Carrier's tool house located approximately a half mile from his home.

Claimant has a positive duty under Rule 17(b) to notify the Carrier. The Rule is tempered to excuse lack of notice if an employee is unable to comply. The Claimant has offered myriad reasons to excuse his failure to notify. However, the circumstances of these reasons are such that they are unlikely to change and if such facts are allowed to excuse noncompliance with the Rule, Claimant would in effect be excused from his duty. Based upon the facts as developed in the transcript, the Board finds that Claimant derelict in his duty under Rule 17(b).

The discipline imposed by the Carrier was lenient. Based upon the facts developed in the record below the Board finds that the imposition of such discipline was not arbitrary or capricious and will remain undisturbed.

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. —

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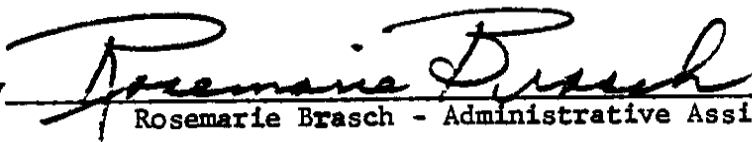
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November 1982.