

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24341
Docket Number MW-24344

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ The Kansas City Southern Railway Company
{ (Milwaukee-Kansas City Southern Joint Agency)

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

(1) The five (5) days of suspension imposed upon Section Laborer L. Williamson for alleged 'violation of General Rules 11 and 14' was arbitrary, capricious, unwarranted and on the basis of unproven charges (Carrier's File 013.31-238).

(2) Section Laborer L. Williamson shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was notified to report for a formal Investigation concerning an asserted failure to report for duty on May 12, 1980.

Subsequent to the Investigation the Claimant was assessed a five (5) day disciplinary suspension.

The Claimant's regular work days were Tuesday through Saturday, inclusive, and on Saturday, May 10, 1980 the Claimant was advised that his gang would be required to perform work on Monday, May 12. According to the Carrier, the Claimant then attempted to claim a need to be off on the 12th however he was again advised by the Foreman that his presence was necessary.

The Claimant denies that he was instructed to report to work but rather states that he was asked by the Foreman to do so.

The Claimant asserts that the Foreman "...didn't say YES, and...didn't say NO. When I told him I had personal business he said if you have personal business, you have personal business to take care of." The Foreman was asked specifically if he had made such a statement and he categorically denied making any such a statement.

The dispute before us places in issue a direct credibility conflict and we have ruled on numerous occasions that it is not incumbent upon a Board such as this to make credibility determinations or to attempt to substitute our judgement for that of the Carrier in this type of a case.

Under the circumstances we are not inclined to **disturb** the assessment of punishment and we will deny the claim.

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.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.

