

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24386
Docket Number MW-24533

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Inc. (St. Louis-San Francisco
(Railway Company)

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

(1) The two (2) weeks of suspension imposed upon Trackman D. R. Brown for 'failure to protect overtime work on Saturday, October 11, 1980, as instructed' was wholly disproportionate to the charge leveled against him (System File B-1957).

(2) The claimant shall be compensated for all wage loss suffered."

OPINION OF BOARD: This docket involved the same parties and a similar factual situation in Awards Nos. 24384 and 24385.

Claimant prior to his suspension was employed as a Trackman by the Carrier laying rail in Arkansas. He was assigned to a gang and was scheduled to work Monday through Friday, with Saturday and Sunday designated as rest days. He was instructed on Friday, October 10, 1980 to report for overtime work on Saturday, October 11, 1980, a designated rest day, to repair track damaged by a derailment. He did not report for duty on Saturday; he did not request permission to be absent on Saturday and he failed to protect the overtime work assignment. When he reported for work the following Monday he was given a two (2) week suspension. This action was requested for review alleging a two-week suspension was unjust discipline. A formal investigation of the matter was held on November 6, 1980 and by letter dated November 12, 1980 the Carrier advised Claimant that as a result thereof the two-week suspension was maintained as a violation of Rule 189 had been found by the Carrier.

There are two aspects to this matter, (1) did the Carrier present sufficient probative evidence to sustain its burden of proof as the charging party and, if so, (2) was the discipline consistent with the charge levied or excessive and wholly disproportionate to the charge?

It is our finding that the evidence of the violation was clearly established by the evidence at the investigation. The evidence showed Claimant understood the instruction and did not request permission to be absent. If, as was alleged, the Claimant has prior personal business it was incumbent upon him to advise his foreman and seek to be excused to be absent. He didn't. As stated in Second Division Award 8238:

"The employment relationship demands, of necessity, and particularly in this critical industry that employees must diligently perform the work for which they are hired. If any employee chooses to determine unilaterally, his employment schedule, he does so at his peril."

There are numerous decisions of this and other divisions of this Board where the Board has refused to substitute its judgment for that of the Carrier unless it is capricious, arbitrary or excessive. There is no evidence of that nature in this case. The Carrier judgment will therefor be and is sustained.

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

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 26th day of May 1983.

