

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25439  
Docket Number MW-24780

Josef P. Sirefman, 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 five (5) days of suspension imposed upon Trackman C. E. Clements for alleged violation of Rule 17(b) was without just and sufficient cause and on the basis of unproven charges (System File C-4(13)-CEC/12-39 (81-30) G).

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

OPINION OF BOARD: Claimant C. E. Clements, a Trackman, was served a January 28, 1981, Notice of Investigation charging that he failed to protect his assignment as Trackman on Section 7359 on January 21, 1981, and that he did not have a valid reason for being absent. A hearing was held on February 13, 1981, and Claimant was subsequently assessed a five calendar day suspension.

A review of the record before this Board establishes that Claimant received a fair and impartial hearing. With respect to the conflict in testimony it has been held that "This Board functions as a reviewing authority and it cannot substitute its version of the facts for that reached by the trier of facts who heard the testimony, observed the demeanor of the witnesses and, by its proximity was entitled to weigh and evaluate the credibility of witnesses" (Third Division Award 21278) There was substantial evidence in the record to sustain the Carrier's determination to discipline Claimant. In view of his prior record, including two suspensions (one but a few weeks before the incident in question), the five calendar day suspension was not excessive.

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.

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Claim denied.

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By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.