

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23015
Docket Number MW-23058

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { **Brotherhood** of Maintenance of Way **Emploees**
(Mississippi Export Railroad Company

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

(1) The discipline of **Trackman** Joe Laster **McLaurin** was without just or sufficient cause and was wholly disproportionate to the offense with which charged.

(2) **Trackman** Joe Lester **McLaurin** shall now be allowed the benefits prescribed in Agreement Rule 18(e)."

OPINION OF BOARD: After an investigatory hearing, claimant, a trackman, was suspended for ten working days by carrier for excessive absenteeism. The organization protested carrier's action and pressed its claim to the board for resolution.

In reviewing the record prepared for this case, it has come to light that carrier failed to supply a copy of the transcript of the June 30, 1978 hearing to the board. While both carrier and the organization have quoted from the transcript in their submission, this board cannot be sure how pertinent or persuasive their quotations might be without the advantage of the transcript. (Since, in such cases, carrier hears the burden of proof and since the facts needed to carry that burden are elicited at a hearing, it is important that this board have the transcript of the hearing before it in order to make a proper determination in the case.)

(Absent that information, this board has no recourse but to uphold the claim on the basis that carrier has not carried its burden of proof, based on the record it submitted for this board's consideration.)

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes 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 **violated**.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **17th day** of October **1980**.