

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25102
Docket Number MW-25363

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Northeast Illinois Railroad Corporation (former Chicago,
(Rock Island & Pacific Railroad Company)

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

(1) The discipline (twenty demerits) imposed upon Track Laborer H. Rios for alleged violation of Rule 'Q' was without just and reasonable cause (System File NIRCRC-D-1064).

(2) The claimant's record shall be cleared of the charge leveled against him and the twenty demerits referred to in Part (1) hereof shall be removed from his record."

OPINION OF BOARD: By letter dated November 15, 1982 the Claimant, H. Rios was notified to attend a formal investigation on November 22, 1982 to develop facts and determine responsibility, if any, in connection with his alleged failure to properly protect his position as track laborer on Tuesday, November 9, 1982. After postponement the hearing was held on November 29, 1982. On December 9, 1982 Mr. Rios was assessed twenty (20) demerits by the Carrier for violation of Rule Q of the Rules and Regulations for Maintenance of Way and Structures, Form PE-01-RC (NIRCRC Employee Conduct **Rules**).

A review of the record shows that the Claimant's assigned working hours on the day in question were 7:30 A.M. to 4:00 P.M. At approximately 7:44 A.M., according to the Carrier log, the Claimant phoned the Division Engineer's Office and told the Roadmaster that he was not feeling well and that "he wasn't going to be in that day". The record also shows that the Carrier's witness, Roadmaster Buchanan, testified that he understood the Claimant to say that he **was** ill and that he also understood the Claimant to say that he was calling in late because he "didn't get in in time" the night before. When questioned on this point by both the Conducting Officer and the General Chairman of the Brotherhood, the Roadmaster stated, at three different points in the transcript of the hearing, that the Claimant did tell him that he did not get in "in time". The Claimant denied, in his testimony, that he told this to the Roadmaster.

By long established precedent this Board cannot sat itself up as a trier of fact when confronted with conflicting testimony (Third Division 10791; 16281; 21238). So long as the testimony of a Carrier's witness is not so clearly devoid of probity that its acceptance would be per se arbitrary and unreasonable, this Board may not substitute its judgment in **ca. of** this type. On merits, therefore, there is sufficient substantial evidence present **in the** record to warrant conclusion that the Claimant is guilty as charged. Since the record evidence on property also shows that the Claimant had been previously disciplined for violation of the same Rule, and since such past record may properly used by the Carrier when assessing discipline (Second Division 8527; Third Division **22320**), the determination by the Carrier in this matter can be judged to be neither arbitrary, capricious nor unreasonable.

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 **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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

7

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.