

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **21264**
Docket Number **MW-21541**

John H. **Dorsey**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Southern Railway Company

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

(1) The Agreement **was** violated when the Carrier dismissed **Laborer** Johnny Reese without benefit of a **fair** and **impartial investigation** as stipulated within Agreement Rule 40(a) /System File MW-337/.

(2) The claimant shall be restored to service with seniority and other rights unimpaired and paid for all time lost subsequent to **February** 11, 1974.

OPINION OF BOARD: The Board has carefully reviewed the record in this dispute. It shows that claimant was employed in Carrier's Track Department from **November** 12, 1973, until February 11, 1974. The claim is that he was dismissed without investigation in accordance with the Agreement.

The Carrier has maintained from the **time** that the claim was initiated that claimant was not **dismissed from** the service, but that rather than follow instructions of his superiors as to work to be performed on February 11, 1974, claimant **removed** his personal belongings from the gang, told other employee that he had quit and left the job of his own volition. There is no probative evidence in the record to refute the contention of the Carrier in this regard.

Based on the record, the **Board** can reach no conclusion other than that claimant voluntarily quit, and having quit he had no further rights **under** the agreement, and no right to an investigation. The claim must be denied.

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

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

Award Number **21264**
Docket Number MW-21541

Page 2

That the Agreement wae not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Pauls
Executive **Secretary**

Dated at Chicago, **Illinois, this** 15th day of October **1976.**