

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21319
Docket Number NW-21487

William G. Caples, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way **Employees**
(**Louisville** and Nashville-Railroad Company

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

(1) The dismissal of Track **Repairman** F. O. **Hudson** on July 25, 1974 was without just and sufficient cause **[System** File 1-25 (52)/D-105580 E-3064.

(2) Track Repairman **F. O. Hudson** shall now be reinstated to service with seniority unimpaired and **he be** paid for all time lost.

OPINION OF BOARD: The **Claimant**, a track repairman, **employed** approximately 18 months, **was** dismissed **for** insubordination on July 25, 1974, after an investigation on the property. The **insubordination charged** consisted of the Claimant's refusing to **answer** questions addressed to him by the **Roadmaster** as to work performed by the gang of which he was part. The Claimant when questioned, answered that the Roadmaster would have to ask the **Foreman** who was not then present, what the **gang had** been doing. The Roadmaster then asked **Claimant** what Claimant had been doing. The Claimant **refused** to advise the **Roadmaster**. The Foreman arrived while this confrontation **was in** progress **and then** advised the Roadmaster what the gang had been doing.

There is little doubt that the Roadmaster to properly discharge his **function** was entitled to receive information **about what** the **gang** had been doing. It also is **understandable** why a member of a **gang might be** reluctant to explain to his Foreman's superior **in the Foreman's absence** what his **gang had been doing**. In the opinion of the **Board** Claimant was on good grounds to **refrain** from giving information on matters reserved to the **Foreman**. However, when questioned as to his own activities, an **answer** could have been given. A failure to give an answer to a proper question of a supervisor was in the opinion of the **Board** an act of insubordination for which a **discipline** could properly have been assessed.

The discipline assessed was dismissal.

It is well established that this **Board** cannot **interfere** with the judgment of the Carrier in assessing discipline unless the discipline was arbitrary or unreasonable in amount. It is the opinion of this **Board** that the factual circumstances in this **case** were **not** such as to sustain permanent **dismissal**. **Even** though insubordination is a serious offense, the degree here shown was not sufficient to justify permanent discharge. For this

reason we direct that **Carrier reinstate** Claimant, with all rights **unim-**
paired, but without Day for time lost while out of service.

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 discipline was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at **Chicago, Illinois**, this 30th day of **November** 1976.

