

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **21442**
Docket Number **MW-21234**

James C. **McBrearty**, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Detroit, Toledo and **Ironton** Railroad Company

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

(1) The suspension of **Trackman** R. F. Martinez from October 29 through November 30, 1973 was arbitrary, capricious and without just and sufficient cause, **and, as** a consequence thereof

(2) The charge shall be stricken from the record and payment be allowed to Mr. Martinez for the **wage loss** suffered, all in accord with Agreement Rule 34(e).

OPINION OF BOARD: Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

A review of the record in the instant case reveals that Claimant did in fact walk off the job 30 minutes before quitting time on October 24, 1973, without asking permission to do so.

There is much conflicting testimony in the record as to whether or not Claimant said he was sick throughout the day and when he was leaving. In this regard, the Board **cannot** weigh **evidence**, resolve conflicts **in testimony**, or pass on the credibility of witnesses.

However, while there is substantial evidence to show Claimant walked off the job 30 minutes before quitting time, there is also substantial evidence to show that Carrier's for- did not forbid Claimant to leave nor order him to stay on the job, thereby giving the impression of tacit approval. Furthermore there **is substantial** evidence to show that Foreman Miller in

directing his work crew, continually referred to them as "babies, the back end of a horse, girls, and little boys" as well as using foul language towards them.

Under all of these circumstances, the Board finds Carrier's **30-day** suspension to be exceedingly harsh, and will therefore reduce it to a **15-day** suspension.

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 violated in part.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

