

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21860
Docket Number MW-21886

James F. **Scearce**, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way **Employees**
(Milwaukee-Kansas City Southern Joint Agency)

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

(1) The dismissal of Section Laborer James Bass was without just and sufficient cause and on the basis of unproven charges (Carrier's File 013.31-174).

(2) Section Laborer James Bass shall be allowed 8 hours' pay for each work day and holiday beginning with October 22, 1975 and continuing until he is permitted to return to work."

OPINION OF BOARD: On October 21, 1975, the Claimant was assigned by his foreman to remain at a job site with two other Section Laborers while they finished spiking ties, the foreman having left the site early. The Claimant was purportedly "nipping" the ties for the other two crew members when he was instructed by the foreman of another crew to assist in the drilling of holes in some rails. He refused. The Claimant's refusal to obey instructions by the other foreman resulted in his discharge, which was eventually reduced to a sixty-day suspension without pay.

The Claimant's foreman affirmed that he had left him "in charge", primarily to wait for the other two members and to return them to their reporting location, after they were finished spiking ties. The Claimant and the other members of his crew were consistent in contending that the time for departure to their home station was close at hand.

On the other hand, the record would appear to indicate that the Claimant erred in his **blatant** refusal to at least endeavor to comply with the other foreman's directive. There was variation in the testimony as to how long it would have taken the crew to return to its home station, thus suggesting that the necessary departure time may not have been so **imminent**.

Nonetheless, the discipline eventually meted out cannot fairly represent the Claimant's culpability here. **His** own foreman was unequivocal in his testimony that the Claimant was under orders from him to return the crew to their home station following their spiking; thus, the Claimant was potentially being placed in a position of having conflicting orders from two foremen with which to contend. Additionally, the other foreman enhanced the tension by name calling displaying a lack of restraint. The discipline will be reduced to a thirty day suspension without pay.

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

The Agreement was violated to the extent set forth in the Opinion.

A W A R D

Claim is sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST:

A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.

