

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21958
Docket Number MW-22123

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The dismissal of R. E. Cochran for alleged insubordination was excessive and wholly disproportionate to the offense with which charged (System File TERRA 1976-31).

(2) Mr. R. E. Cochran be reinstated with seniority and all rights unimpaired and he be compensated for all wage loss suffered.

OPINION OF BOARD: This Board has consistently looked askance at willful acts of insubordination, absent some compelling extenuating circumstance to mitigate the ultimate penalty of dismissal. We realize the importance of reasoned but justified compassion, when the particulars of a discipline case warrant the tempering or reversal of a harsh disciplinary imposition. But we are also clearly mindful of the public policy imperatives of the railroad industry. We will eschew detailing a litany of case law underscoring the need for prompt and efficient execution of directives, orders and commands and note instead the ready availability of contractually provided grievance adjustment machinery to resolve disputes. We have long held that failure to obey a supervisory direction is a serious offense.

After reviewing the record against the parameters of established Third Division holdings, we find sufficient probative evidence to sustain the charge of willful insubordination. Claimant's contentious disposition and refusal to obey his supervisor's instructions "to sit down" and remain "quiet", particularly when manifested at a safety meeting in full and open view of other employees, would certainly create a lax disciplinary atmosphere ill conducive to this industry.

We find no mitigative or other special urgency that would show **that the supervisor's** actions were **impermissible or explicitly** contributive of **claimant's** insubordination. Moreover, we well recognize this **Division's language** standards and **are familiar** with the distinction of appropriate **environmental language** usage, but we must distinguish **between the language** issuing out of **an** argument between **a supervisor** and a subordinate, as in the instant case, and the **normal** utterances of adjectival vulgarities in a routine work setting.

It appears **from** the record before the Board that the charge of insubordination **against claimant** was precise; that substantial evidence given at the investigation by several witnesses **sustained the** charge of insubordination; that **claimant** was accorded **a fair and impartial hearing on appeal; and that the** carrier has neither **been arbitrary nor capricious** nor abused its discretion. Therefore, the claim **must** be denied.

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, 8s approved June **21, 1934;**

That this Division of the Adjustment Board **has jurisdiction** over the dispute involved herein; and

The Agreement **was** not violated.

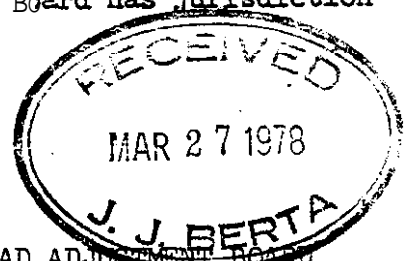
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST:

A.W. Paulsen
Executive Secretary



Dated at Chicago, Illinois, this 15th day of **March** 1978.