

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22094
Docket Number MW-22083

Louis Yagode, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Alton and Southern Railway Company

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

(1) The dismissal of Trackman E. Dinwiddie was without just and sufficient cause and **extremely disproportionate** to the offense with which he was charged (System File A&S 1976-3/K 1638-51).

(2) The Carrier shall now restore Claimant Dinwiddie to service with **all** seniority rights **unimpaired** and with **pay** for all **time** lost.

OPINION OF BOARD: The record, as reflected by transcript of investigation on the basis of which Carrier found Claimant guilty of the charges and assessed the discharge penalty which is now being appealed in these proceedings, shows:

1. On December 10, 1975, Claimant repeatedly failed to obey proper and **performable** instructions issued by an authorized superior.

2. Upon further instructions to apply **himself** to work, relayed from Roadmaster via Foreman, Claimant characterized the Roadmaster, to those standing around him, by a foul epithet. When the latter questioned Claimant concerning this statement, he denied making it. This was followed by Claimant's additional refusal of an order from Roadmaster to apply **himself** to work.

It is our decision from the facts of record that Carrier was justified in concluding that Claimant was guilty of **insubordination** and the use of foul language towards his supervisor. We find no basis for intruding on Carrier's **judgement** that the penalty of discharge was appropriately **within** its rights of disciplinary action therefor.

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 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 31st day of May 1978.

