

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22208
Docket Number MW-22251

Nathan Lipson, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Consolidated Rail Corporation
((Buffalo Creek R. R.)

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

(1) The dismissal of **Trackman** J. R. Flores for 'insubordination and interference with work of the Maintenance of Way forces' was excessive and **wholly** disproportionate to the offense with which charged (**System** Docket BC-1 Buffalo Division Case **BCK-P/RD-2390**).

(2) **Trackman** J. R. Flores be reinstated with seniority and all other rights unimpaired and he be **compensated** for all wage loss suffered."

OPINION OF BOARD: This is a discipline case wherein Claimant was charged with insubordination and interference with the work of Maintenance of Way forces, found guilty and dismissed.

The Organization asserts **among** other things, that the trial was unfair because the **Trainmaster** acted in a dual capacity when he filed the charges and notified Claimant of the discipline being **administered**. We have ruled on this question many times and our conclusion has been that in the absence of contractual proscription, there is no element of unfairness in the **same** officer **making** the charge and assessing the discipline.

On the **merits**, the transcript contains substantial evidence in support of the charge of insubordination. There was no question of safety or risk of injury involved as the Track Foreman, with **48** years of railroad experience, testified the **job** had been done in this **manner** numerous times in the past. In the absence of such well **known** exceptions, the **Claimant** was obligated to obey and file his grievance in accordance with the **Agreement**. The trial **record** also contains **ample** evidence leading to the conclusion that **Claimant** **willfully** and intentionally interfered with the completion of work by other **trackmen**. The Carrier was not required to condone **Claimant's** refusal to work or his interference with the work activities of others, and the **claim** **must** be denied. In view of our **disposition on** the merits, we see no reason to discuss the procedural points raised by Carrier.

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 Employes** involved in this dispute -- are respectively Carrier **and Employes** 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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1978.

