

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22382  
Docket Number **MW-22378**

Abraham Weiss, 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 suspension of Track Laborer Charles E. Brooks 'for nineteen (19) days without pay' was without just and sufficient cause, on the basis of unproven and disproven **charges**, and on the basis of a hearing that was neither fair nor impartial (System File TRRA 1977-1).

(2) As a consequence of the above, the claimant shall be allowed pay 'for eight (8) hours each day, beginning with November 15, 1976 and extending thru **November** 30, 1976, and all overtime to which he might have been entitled to if he had been permitted to work during this period of **time** at the Track Laborer's rate of pay.'"

OPINION OF BOARD: Claimant, an **employee** with 5 years' service, was suspended for 19 days without pay for alleged insubordination in that he refused to comply with his foreman's request to assist another **employee** working about 20 yards away. /

The record indicates that Claimant and his Foreman exchanged words on the day in question. Claimant alleges that the **Foreman** picked on him and **that** when he complained, the Foreman pulled a knife, whereupon he picked up a claw bar to defend himself. The Foreman called a Carrier policeman who escorted Claimant from the property. ✓

A witness at the investigation testified **that** the Foreman "was constantly on /Claimant/, nagging him to do this, do that...." He also testified **that** he saw the Foreman pull a knife with the blade open. 3

4 Based on a careful review of the transcript of the proceedings and the record before us, **we** find a lack of substantive evidence that the Claimant was guilty as charged. We are of the opinion that the Foreman, by his conduct, provoked the act of insubordination. We also conclude that when **Claimant** picked up the claw bar, it was for purposes of self-defense.

9 Carrier has failed to prove the case in substance; it has failed to submit probative evidence to support the charge. Accordingly, **we must** sustain the claim and direct that Claimant is to be compensated for wages lost during his 19 days' 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.

**A. W. A. R. D.**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**

By **Order** of Third Division

ATTEST:

*A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1979.

