

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22394**
Docket Number W-22402

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of **Trackman** B. G. Kilcrease for alleged violation of Carrier's Rules 176, **177** and **189** was without **just** and sufficient cause and excessively harsh and disproportionate to the offense with which charged (System File **B-1650/R-20691**).

(2) The Carrier **shall** return **Claimant** Kilcrease to service and accord him all the benefits and remedies prescribed within Agreement Rule **91 (6)**."

OPINION OF BOARD: On November 1, **1976**, Claimant was advised of a **formal** investigation concerning asserted absence from duty and insubordination on October **29, 1976**. Subsequent to the **investigation**, he was dismissed from service.

Our review of the entire record compels us to observe **that** Carrier presented substantial evidence to show that this Claimant did absent himself from duty without permission and that he was clearly insubordinate.

We find that it was standard procedure at derailments **for** members of each **gang** to eat as a group. Nonetheless, this Claimant (without instructions **or** permission) departed the work site and drove into town for breakfast with another crew, which crew left the area before Claimant's crew, and his regular crew continued to work during this time.

This unexplained absence by Claimant was further compounded by the fact that, instead of **returning** to the work site, he then rode further into town with a different crew in another truck, which was seeking gasoline. When this truck finally returned to the work site, the **Claimant** was found asleep in the back of the truck. **He** was awakened by his Foreman and questioned regarding his whereabouts.

During the ensuing discussions, the Claimant cursed and threatened the Foreman with bodily **harm**. He then requested to be released because he was **sick**. Although he was instructed to wait in one of the trucks until he could be transported to town, the Claimant further disrupted the operation by **failing** to remain in the truck; but instead, **engaged** in conversation with a **trackman** who was **still working**.

Based upon our consideration of the entire record, we do not find that the discipline imposed was arbitrary, capricious and/or unreasonable. A Carrier certainly has a right to expect that an employe will see to his duties, rather than embarking **upon quarrelsome and threatening** conduct toward Supervisors. The claim will 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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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 27th day of April 1979.