

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22572
Docket Number MW-22177

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance** of Way **Employees**
(
(Illinois Central Gulf Railroad Company

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

(1) The dismissal of **Trackman** C. Smith for alleged 'violation of Maintenance of Way and Structures **Rule K**' was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File **C-90-T-76/134-296-130** Spl. Case No. 1047 **MofW**).

(2) The benefits and privileges of Agreement Rule 34(i) shall now be extended and applied to **Claimant** C. Smith."

OPINION OF BOARD: On April 7, 1976 **Mr.** Smith was notified to attend a hearing to determine whether, on April 2, 1976, he had been insubordinate to his foreman. That hearing was scheduled to be held April 12, 1976 before Hearing Officer C. P. Davis, **Carrier's** Division Engineer. Claimant appeared at that hearing but demanded an adjournment so that he could obtain certain witnesses. During adjournment discussions among Claimant, Hearing Officer Davis and the Organization's Local **Chairman**, *Claimant became boisterous, and used threatening and profane remarks toward Hearing Officer Davis.* Claimant's Local Chairman tried unsuccessfully to quiet him during that outburst. A one-day adjournment ultimately was granted and the hearing into the alleged insubordination on April 2, 1976 was held on April 13, 1976. Claimant failed to appear at that hearing which was held in absentia. On the basis of that hearing he was assessed **disciplinary** suspension of 30 days, to commence April 12, 1976. That 30 day suspension was served by Claimant and never has been grieved. However, under date of April 20, 1976 Claimant was served another Notice of Investigation into his conduct on April 12 and 13, 1976 as follows:

"...to determine whether you were insubordinate, discourteous, quarrelsome and used profane and vulgar language to Division Engineer Davis at approximately **2:30 P.M.** on Monday, April 12, 1976, **in** his office during an investigation, and to determine if you were insubordinate in your failure to appear at the investigation which was postponed at your request to Tuesday, April 13, 1976, at 2:00 P.M."

A Hearing Officer other than Division Engineer Davis conducted the investigation on April 27, 1976. Claimant attended that hearing and was represented by his **Local** Chairman. Cur record indicates that at some point during the hearing day Claimant apologized to Division Engineer Davis for his intemperate remarks on April 12, 1976. Following the hearing Carrier found Claimant guilty as charged and dismissed him from service.

There is no question that Claimant received a proper investigation nor that he was guilty of using **insubordinate**, quarrelsome and profane language in addressing the **Division** Engineer on April 12, 1976. His behavior was **absolutely** unacceptable and need not be tolerated by any employer. The only question in the case is whether the ultimate penalty of dismissal was excessive. In consideration of Claimant's clean discipline record prior to April 1976 and his apparently sincere apology to the Division Engineer we conclude that termination of all service is unreasonably severe for his act of intemperance. We shall reduce the penalty to suspension without pay with the additional admonition to Claimant that this may be his last chance to prove that he can conduct himself properly toward his authorized supervisors. With that understanding, Claimant shall be reinstated to **service with seniority unimpaired but without** pay for lost time.

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;

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

That-the penalty imposed was excessive.

A W A R D

Part 1 of claim sustained to the extent indicated in the Opinion and Findings.

Part 2 of claim denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of **October 1979**.