

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22677
Docket Number MW-22540

James F. Searce, 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) **Trackman** E. A. Freeman was withheld from service without just and sufficient cause during the period August 5, 1977 to August 22, 1977 (System File No. B-1664).

(2) The claimant's personal record be cleared of the charge placed against him and reimbursement be made for all wage loss suffered, including thirteen hours of overtime pay."

OPINION OF BOARD: This dispute arises when, on August 5, 1977, the Claimant, a **Trackman**, reported to work five minutes late. For this infraction, he was suspended the remainder of the day. When he reported for work on August 8, 1977, the Carrier presented a form letter for him to sign which stated:

"I, the undersigned have been disciplined for being late to work, **and** this will not be tolerated. Next time you will automatically be taken out of service."

The Claimant refused to sign the letter, words followed and the Claimant was removed from service. Subsequent discussions resulted in his return to duty but without pay for the period of his suspension - the period of time involved in this Claim.

The Carrier contends its removal action is justified for his being late for work and for his refusal to follow instructions. We reject, as a basis for removal, the tardiness on August 5 when he was sent home without pay. The Claimant "paid the price" set by the Carrier **on** August 5 when he was sent home without pay. We shall not affirm his "paying twice" as the Carrier suggests here by raising this same infraction as part of the basis for his removal..

As to the refusal of Claimant to sign the form letter, it is clear that the Claimant committed - as a minimum - an error in judgment, since the Carrier's action did not violate his legal rights **nor** did it place him in **harms** way. Given a lack of credible showing that the Claimant had a history of similar infractions or that he had previously been alerted to the errors of his ways, we question any showing of progressive discipline; thus, the Carrier's original plan of removal was overreaching on its part. The record evidences reconsideration by the Carrier in that regard. While the insubordination of the Claimant in this instance is hardly of the calibre as insubordination such as refusal to accept a reasonable order to perform work properly assigned, we do not suggest that such action is, or should be condoned. There is nothing indicated to suggest that the Claimant could not have grieved the requirement to sign the document and thus protect his right to review.

We shall affirm the Carrier's suspension of the grievant without pay for the period involved, but we are obliged to point out to the Carrier that its intent to **remove** was out of proportion with the circumstances **involved** in this case. We order all references to **removal** be expunged from the Claimant's record, amending such record to show a suspension for refusing to accept an order.

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 Employee involved in this dispute are respectively Carrier **and Employee** 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

Carrier **committed** a technical violation of the Agreement.

A W A R D

Claim for back pay is denied. The basis for the discipline and the **Claimant's record** will be modified on the basis of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.