

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22719
Docket Number MW-22569

James F. **Scearce**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Terminal Railroad Association of St. Louis

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

(1) The Carrier, without just and sufficient cause, improperly disciplined Track Laborer Steven **J.** Schaefer on charges that he allegedly failed to protect his 'assignment on numerous occasions account being **late**' and **that** he allegedly failed to protect his '**assignment** during an emergency and insubordination on Thursday, May 5, 1977' **/System Pile TRRA 1977-26/**.

(2) The above charges be stricken from the claimant's record, he be reinstated with seniority and all other rights unimpaired and he be reimbursed for all monetary loss suffered beginning May 6, 1977, all **in conformance** with Rule 24(d)."

OPINION OF BOARD: The Claimant herein was a Track Laborer with about five 'years' service at the time of his dismissal. The record shows that over the period of a year's **service**, the Carrier had permitted the Claimant to leave work at a specific time (4:00 p.m.) in order **that** he might attend school. On about May 4, 1977 a derailment occurred which apparently required the extended **services** of the Claimant on May 5, 1977; he was so advised, but even upon a direct order to **remain on the job**, he left **with a comment** of not caring if taken out of service as a result. After a hearing, which required rescheduling due to the **Claimant's** failure to **appear**, he **was** removed for failing to protect his assignment and insubordination. The Organization contends his removal is arbitrary, capricious and excessive; it points to a contention that the work involved required less than an hour to complete. In his own defense, the Claimant contends he understood his rights to leave work were not subject to any **restrictions**.

We offer no solace to the Claimant here. Obviously, with five years' service, he could not be unaware that he owed a basic obligation to meet the requirements of his position. The fact **that** the Carrier had been willing to **accommodate** to the Claimant's personal wants was obviously lost upon him, when the need arose to be available under the circumstances which arose on May 5, 1977. His unwillingness to alter his own wants was

translated into an act of insubordination -- refusal of a direct **and** reasonable order, occasioned by an **unusual** circumstance. There was no question but that the Claimant had measured the potential **dimensions** of the results of such a decision. We shall **not make** right that which was obviously wrong.

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 not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.

