

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22737  
Docket Number **MW-22637**

Paul c. carter, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of **Trackman J. E. Purnell** was without just and sufficient **cause** and wholly disproportionate to **the** offense with which charged **/System File C-4(13)-JEP/12-39(77-14) J2/**.

(2) **Trackman Purnell** shall be restored to service with seniority, vacation and all other rights unimpaired; his record be cleared of the charges; he shall be compensated for all wages lost; all in conformance with Section 3 of Agreement Rule 39."

**OPINION OF BOARD:** Claimant was a **trackman**, assigned to Carrier's System **Rail** Gang 8592, Equipment for the gang consisted of kitchen, dining and sleeping **cars**. On February 21, 1977, it was decided by those in charge of the gang **that** breakfast was to be served from **6:15** A.M. until **6:50** A.M., and no **one** was to be served after that time.

The Carrier contends that instructions were issued to all the **men** in the gang as to the breakfast serving time. Claimant contends that he did not receive such instructions.

On the morning of February 22, 1977, **claimant** arrived at the dining car after the food had been removed from the serving line. When he was unable to obtain food he became angry, threw a plate against the wall, shattering same, and also **used** profanity.

Following a **formal** investigation, claimant was dismissed from service effective March II, 1977. The Board has carefully reviewed the transcript of the investigation and the submissions of the parties. There is substantial evidence that claimant engaged in improper conduct. His actions justified severe discipline.

Based on the entire record, the Board is of the considered opinion ~~that~~ the time that **claimant** has been out of service should constitute sufficient discipline for the offense. We will award that claimant be restored to the service with seniority and other rights unimpaired, but without compensation for **time** lost while **out** of service. **Claimant** should clearly understand, however, that the purpose of this award is to give him "one last chance" to become and remain a **responsible employee**, and that further **major** infractions by him will result in the **permanent** termination of his services.

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 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

That the discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

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

ATTEST:

*A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.

