

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22746
Docket Number MW-22830

Paul C. Carter, 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 3. J. Earnest was without just 2nd sufficient cause, disproportionate to the offense with which charged and in violation of the Agreement (System File B-1444).

(2) Trackman 3. J. Earnest shall now be allowed the benefits prescribed in Agreement Rule 91(b)(6)."

OPINION OF BOARD: Claimant was assigned as trackman on Carrier's Gang No. 113, with about four years of service. He was dismissed by the Foreman on April 7, 1978, for insubordination in refusing to perform work as instructed by the Foreman. At the request of the Organization, a formal investigation was conducted on April 25, 1975. Claimant was advised on May 2, 1978, that he was permanently removed from the service. Claim was then presented by the Organization 2nd appealed in the usual manner on the property, requesting that claimant be restored to service with all rights unimpaired 2nd pay for time lost from April 7, 1973,

A copy of the transcript of the investigation conducted on April 25, 1978, has been made 2 part of the record. From the record before the Board we find that none of claimant's substantive procedural rights was violated. The Organization complains that the introduction of claimant's past record in the investigation precluded a fair and impartial hearing. Although 2 few awards have held it to be improper to include an employee's past record in the transcript of the investigation, other awards have held to the contrary, where the past record was not used to determine guilt, but for the purpose of determining the discipline to be imposed for a proven offense. This referee agrees with the latter group of awards. See recent Awards Nos. 22521 and 22460.

There was substantial evidence presented at the investigation to support the charge of insubordination **against** the claimant, and the Carrier's actions in dismissing him from service. The Foreman was in charge of the gang and **was** responsible for the work performed by the gang. The claimant was obligated to **comply** with the instructions of the Foreman and then handle through the grievance procedure if he thought that he was being mistreated.

There is no proper basis for the **Board** to interfere with **the** discipline imposed by *the Carrier*.

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 denied.

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

ATTEST: 

Executive Secretary

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