

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22872
Docket Number w-22894

Rodney E. Dennis, 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 Herman Clifton** was without just and sufficient cause /System File C-4(13)-HC/12-39(78-7)J/.

(2) The claimant's record shall be cleared of the charges placed against him, he **be** restored to service with seniority and all other rights unimpaired and he be compensated for all wage loss suffered."

OPINION OF BOARD: **Claimant**, a **trackman** assigned to Section Force 6812 at **Palm Dale**, Florida, was dismissed from service for striking the Roadmaster. The Organization does not deny the fact that claimant struck the **Roadmaster**, but it vehemently argues that claimant was provoked by the **Roadmaster** and that such provocation should mitigate against claimant's dismissal from service.

The transcript of the hearing that resulted in claimant's dismissal has been made a part of the record in this case. A review of that transcript and the entire record reveals that claimant was afforded a fair and impartial **hearing** before his dismissal and that his substantive procedural rights were not denied him.

The altercation between claimant and the **Roadmaster** came about when the **Roadmaster** ordered claimant off the motor car and told him to produce a written excuse for his absence from **work** the previous day. This order, and the manner in which it was given, annoyed claimant and he struck the Roadmaster. Claimant, by his own admission, slapped the **Roadmaster's** hand away from his face. The record clearly establishes **that** the **Roadmaster** did not touch claimant, but only waved his finger in his face while he was talking to him.

The statement alleged to have been made by the **Roadmaster** that **provocated** the incident was "Get **your** ass off the motor and get an excuse." There is some conflicting testimony in the record on this point, but if one assumes that this was said, it is difficult to conclude that such a **comment** could be sufficient provocation for claimant to strike cut and slap the **Roadmaster's** arm.

On **numerous** occasions in the past, this Board **has** issued awards wherein **it** reduced the penalty imposed by Carrier when it was clearly established in the record that the disciplined employe was provoked into retaliating in **kind** or when an employe acted in no more an unacceptable manner than did the supervisor who provoked him. That is not the situation in this case. The **Roadmaster** spoke aggressively to claimant. Claimant responded in kind verbally, but he also struck the **Roadmaster**. There was no justification for such an action.

It is a well-accepted principle in **employer-employe** relations that men working together, **regardless of their relationship**, do not strike each other. When one man assaults another on company property, he can expect to be severely disciplined by his employer. Discharge is not an uncommon penalty in such situations. **For** an **employe** to strike a supervisor is intolerable. This Board need not recite the reasons why this is **un-**acceptable behavior. It should be obvious to even the most uninformed.

Based on the entire record, the Board is of the opinion that Carrier was justified in dismissing claimant. It has not acted in an arbitrary, **capricious**, or discriminatory manner and the penalty imposed clearly fits the "crime" **committed** and admitted to by claimant.

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:

A. W. Paulos
Executive **Secretary**

Dated at Chicago, Illinois, this 18th day of **June** 1980.