

NATIONAL RAILROAD **ADJUSTMENT** BOARD

Award Number 22818
Docket Number w-23008

THIRD DIVISION

Rodney **E.** Dennis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Mississippi Export Railroad Company

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

(1) **The** dismissal of **Trackman J. L. McLaurin**, E. Buckley and **J. Jackson** was without just or sufficient cause and on the basis of unproven charges.

(2) The claimants shall now be allowed the remedy prescribed in Rule **18(e)**."

OPINION OF BOARD: **Claimants McLaurin**, Buckley, and Jackson were **trackmen** in Carrier's Maintenance of Way Department at Moss Point, Mississippi. In July 1978, it was apparent that dissension had developed among the men on the section. This problem was brought to the attention of the General Manager of the railroad by members of the track gang. Sixteen members of the gang made statements concerning the **matter, naming** claimants as the cause of the trouble. As a result of these initial complaints, the General Manager convened a hearing. He notified claimants of this hearing and, by letter dated July 10, 1978, charged each claimant with the following:

- "1. Uncooperative attitude towards your fellow employees
2. Uncooperative attitude towards your foreman and harassment of him
3. Failure to properly perform your share of the work
4. Performing your work in a **manner** which is unsafe for yourself and **your** fellow employees
5. Interference with the harmonious and efficient operation of the railroad "

Claimant Buckley was also charged with excessive absenteeism. As a result of the hearing, claimants were dismissed from service.

Claimants appealed Carrier's decision, retained private counsel, and requested a hearing into the matter before the Third Division **of the** Railroad Adjustment Board. The case was assigned Docket No. MS-22594.

A hearing was granted on July 25, 1978. Referee Sickles sat with the Board. The charges against Carrier were (1) discrimination against petitioners because of their race; (2) laying off petitioners unjustifiably, and (3) terminating petitioners without cause. The Board issued award number 22495 in this matter. In that award, it was pointed out **that** the question of improper discharge was not properly before the Board; consequently, it was not considered. The claim as to alleged discrimination and unjustifiable layoffs was dismissed. The Organization was not a party to that dispute.

Claimants also filed charges against Carrier with the Equal Employment Opportunity Commission, alleging that they were **laid** off, discharged, and demoted because of race and union activities. The claim was denied by the commission.

On March 29, 1979, the Organization notified the Third Division of the National Railroad Adjustment Board that it intended to file an **ex parte** submission in the dispute. The submission was forwarded on April 30, 1979. This claim alleges that the dismissal of **trackmen** 3. L. **McLaurin**, E. Buckley, and J. Jackson was without just or sufficient cause and **was** based on unproven charges. This claim is now before this Board as Docket **MW-23008** and is the subject of the instant claim.

Carrier argues a procedural point alleging that this Board, in Award No. 22495, has considered the **same** issue that is before us in this case. Consequently, it **contends** that this case should be dismissed because it represents a second attempt by claimants to have their case considered by the Board. Carrier cites numerous awards in support of its position on this issue.

A reading of Award 22495 clearly reveals that the discharge of claimants was not considered by this Board previously. That case dealt only with discrimination and improper layoff. The instant case deals only with the alleged improper discharge. These are different cases, with different issues, **and**, as such, we will address the **merits** in this decision.

Sixteen **employes** of the track department **made** statements to the General Manager about the behavior of the three claimants in this case. They subsequently testified at the hearings into the charges against claimants. To a **man**, they testified that when claimants were on the job, they were difficult to work with. They were argumentative, they complained about work assignments, and they did not pull their share of the load.

They made it difficult for the older man and they were **not** proficient in their work. Numerous men testified about specific instances of safety on the job was an issue. Others testified that they were afraid the claimants would do them bodily harm. Still others testified that claimants used derogatory language when speaking to them or about them.

The record of this case is replete with testimony that supports Carrier's action in this instance. The testimony of any single man on one or two specific points may not be sufficient grounds to **support** the discharge of claimants. But when the record is reviewed as a whole and the **testimony** of all the men at the hearing is considered, it is abundantly clear that claimants were uncooperative, argumentative, difficult to supervise, and presented a safety hazard. When these attributes are considered together, one can only conclude that their presence on the railroad has had a **negative** impact on the ability of the track gang to get their work done. This has surely had an impact on the **harmonious** operation of the railroad.

The problem on the track gang was brought to a head by the men themselves. When these problems were discussed with the General Manager, he convened a hearing into the matter. Based on the facts obtained at that hearing, claimants were dismissed from service. This Board sees no justification for upsetting that decision. Carrier did not act in an arbitrary and capricious **manner**. Carrier weighed the available evidence and concluded that claimants were guilty as charged. They were dismissed.

Claimants received ample opportunity to confront their accusers on each and every issue. Despite **claimants'** repeated questions of each witness, the testimony of these witnesses held up well. **From a** review of the record, there is no evidence to show that either Carrier or claimants' fellow workers conspired to falsely accuse them. The issue was brought to the attention of Carrier supervision because the men on the track gang were concerned about getting their work done in an efficient manner and about their safety on the job. This Board can find no fault with either of those motives.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway **Labor** Act, as approved June 21, 1934;

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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 **18th** day of June 1980.