

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22896

Docket Number MW-22741

Joseph A. Sickles, 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 J. J. Beamon** was without just or sufficient cause and was exceedingly disproportionate to the offense with which charged (System File B-1462).

(2) The Carrier shall restore Claimant **Beamon** to service and extend to him all the benefits and remedies prescribed in Rule **91(b)(6).**"

OPINION OF BOARD: On **January 4, 1978, Claimant** was instructed to operate the TP-18 Ballast Regulator. When he refused - advising that he was not qualified to operate said machine - he was **summarily** dismissed from service. Claimant thereupon requested an investigation. Subsequent to that investigation, the dismissal was reaffirmed.

Approximately 4 months later the **Employee** was reinstated without back pay **and** this **dispute** is concerned with whether or not the 4 month suspension was appropriate.

Claimant insists that his declination was prompted by his conviction that he was "not qualified on it", but the evidence shows that he was capable of operating the equipment and had done so previously.

Surely, an **employee** can refuse to perform a task for which he is totally unqualified; especially if there is present an element of danger to himself or to others. At the **same** time, an **employee** acts **at his** peril when he refuses to comply with a reasonable instruction. **Under** this particular record, **we** are inclined to find that there is substantial evidence to establish that Claimant should have complied with the instruction. The suspension in question was not inappropriate.

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 Employes involved in this dispute are respectively Carrier and **Employes** 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. Pauls
Executive Secretary

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