

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22913**
Docket Number EM-22628

Richard R. Rasher, 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-Driver R. E. Curtis on October 3, 1977 was without just or sufficient cause and was exceedingly disproportionate to the offense with which charged (System File B-1737).

(2) The claimant's record shall be cleared of the charge **and** he shall be paid for all time lost from dismissal date of October 3, 1977 to the date of his reinstatement on January 13, 1978."

OPINION OF BOARD: **Claimant**, a **trackman-driver**, with 5 months of service, was dismissed on Monday, October 3, 1977 for insubordination.

The incident which gave rise to Claimant's dismissal occurred on Friday, September 30, 1977. Claimant was working in Tie **Gang** T-1-10, preparing to load and move **some** equipment from Carthage, Missouri to Fairland, Oklahoma. The Assistant Roadmaster assigned the Claimant several jobs, one of which was the delivery of a **55-gallon** drum of hydraulic oil to a mechanic. The Assistant Foreman instructed Claimant to deliver the oil at approximately 3 p.m. **and** twice thereafter checked to see if the delivery had been made. **Claimant** testified that he, "wasn't allowed time to do everything that had to be done."

At approximately **7:30** p.m. the Assistant Roadmaster observed Claimant **in** his personal truck, preparing to leave. The Assistant Roadmaster asked Claimant for a third **time** if he had delivered the **oil**. The two men exchanged unfriendly words; Claimant got back into his truck and, according to the testimony of the Assistant Foreman, "Went over and unloaded the drum on the ground and returned, stopping the truck by sliding it." The Assistant **Roadmaster** then told Claimant that he would no longer be his **trackman-driver**. Claimant gave the Assistant Roadmaster the keys to the company truck and his credit cards. He then got back into his pick up truck, **revved** his **engine** and sped off, spewing the Assistant Roadmaster and bystanders with gravel and dirt. The Assistant Foreman suffered a cut on his forehead and a bruised **knee**.
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When Claimant reported for work on October 3, 1977, he was told ~~that~~he had been dismissed from **service** for **violating Rules** 175, 176, 652, and paragraphs B and C of the General Notice of the **Rules** of the Maintenance of Way **and** Structures **Department**, which read as follows:

"General Notice **(B)**: Obedience to the rules is essential to safety."

"Paragraph **(C)**: To enter or remain in **the** service **is** an assurance of **willingness** to obey the rules."

"175. Civil, mannerly deportment is required of all **employees** in their dealings with **the** public, their subordinates, **and** each other. Boisterous, profane or vulgar Language is forbidden. Courtesy and attention to patrons is required. Employees must not enter into altercations with any person, no matter what provocation may be given, but will make note of the facts and report to their **immediate** superior."

"176. Employees who are negligent or indifferent to duty, **insubordinate, dishonest, immoral, quarrelsome, insolent** or otherwise vicious, or who conduct **themselves and** handle **their** personal obligations in such a way that the railway will be subject to criticism and loss of good will, will not be retained in the service."

"652. **Employees** who are careless of the safety of themselves or others will not be continued in **the** service."

Pursuant to the Organization's request, a **formal** investigation was conducted **on** November 7, 1977. **The charges** were confirmed at the investigation. **On** January 4, 1978, the Carrier sent a **letter** to the Organization which contained an offer to recall Claimant to **service** as a **trackman**. Claimant returned to service on January 13, 1978.

At the time of the incident, Claimant had approximately 5 months of service. He held seniority rights as a **trackman**, a Class 1 **employee**. He had been assigned on September 27, 1977 to the **trackman-driver** position, Class 2 position, but had not yet established seniority in Class 2 in accordance with the provisions of **Rule** 2(b)(1) which provides:

"An **employee** shall establish a seniority in other than **Class 1 retroactively as** of the **date** assigned a position or vacancy **in** such class after the **employee** has performed service on 20 working days in such class without being disqualified."

The claim before this Board is that the dismissal was without just cause and **disproportionate to** the offense. The relief **requested is reinstatement with** back pay, all rights unimpaired. The **claim** is denied. Despite **the** allegation of an excessive work load, **the** actions of Claimant on September 30, 1977, which he admitted to at the investigation, were sufficient grounds for the imposition of discipline. The discipline, which amounted to a three-month suspension, was not disproportionate to the offense. The record reveals no **mitigating circumstances** which would warrant a modification of the discipline assessed against 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:


Executive Secretary

Dated at Chicago, Illinois, this 22nd day of July 1980.