

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22915
Docket Number **MW-22649**

Richard R. **Kasher**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Terminal Railroad Association of St. Louis

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

(1) The charge that Machine Operator **Larry Buneta** was insubordinate to Track Supervisor Don Stogner 'at or about **2:30** P.M., September 12, 1977' was unproven and **unmistakably** disprwen at the investigation held on September 27, 1977, as a consequence of which

(2) The suspension of 'fourteen (14) days without pay' which was **imposed** upon Claimant **Buneta** was improper and in violation of Rule 24(d) /System File TRRA 1977-29/.

(3) The charge of insubordination shall be stricken from the record and Claimant **Buneta** shall be reimbursed for any monetary **loss** suffered by him."

OPINION OF BOARD: Claimant had five and one-half years of service with the Carrier when he was removed **on** September 12, 1977 for insubordination. A hearing was held on September 27, 1977 and by letter dated September 29, 1977 Claimant was informed that the charge **was proven** and a fourteen (14) day suspension was assessed. **Claimant** returned to work on Monday, October 3, 1977.

The undisputed facts concerning the incident are that, on September 12, 1977 **Claimant** was assigned as a truck driver to System Gang **#9**. Sometime during his shift Claimant entered a nearby building to use the **rest** room. Track Supervisor Donald Stogner observed Claimant entering the building and after approximately one-half hour proceeded **to** the building to check on Claimant. As Supervisor **Stogner** approached the building, the **Claimant** appeared outside and **soon** thereafter Claimant began using profane language.

The record contains conflicting testimony **regarding** the question of whether Supervisor Stogner was told that Claimant was feeling ill and whether Stogner provoked Claimant's profane outburst with indiscreet language of his **own**. In any event, after the heated exchange of words, Claimant was **removed** from service pending a hearing.

As a preliminary matter we wish to **point** out **that** Claimant's removal from **service** was inappropriate in light of the circumstances. While some awards go further, it is generally accepted by this Board that a Carrier is justified in **removing** an **employee** from service only when it appears that the employee is a hazard to his own safety and the safety of others; when his misconduct was gross; or, **when** failure to take the employee out of service would **impede** the Carrier in the proper **and** effective conduct of its business (See Award No. 21447, Referee Nicholas H. Zumas).

While the instant charge was not sufficiently serious to warrant Claimant's **removal** from service pending a hearing, the **14-day** suspension was neither arbitrary nor unreasonable in light of Claimant's insubordinate use of profanity. Although the supervisor's actions may have been provoking, this Board cannot condone Claimant's responses. The language used was profane and it was not demonstrated that it was shop language accepted by supervision.

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

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.