

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22916
Docket Number FM-22902

George S. **Roukis**, Referee

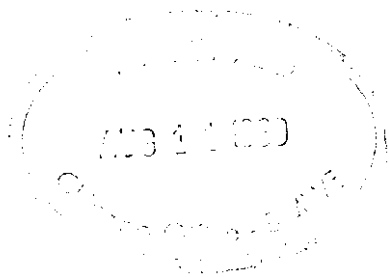
PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast Line Railroad Company

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

Because of unjust treatment in connection with an incident which occurred on May 11, 1977, **Trackman** B. L. Smith, Sr. be allowed to return to the camp car from which he was removed and the letter of caution involving said incident be expunged from his personal record [C-4(13)-BLS/12-39(77025)]."

OPINION OF BOARD: Claimant was assigned to Mobile Rail Gang 8592 on the night of the incident, to wit, **May** 12, 1977, involving himself and other **employees** occupying the same car. He requested a just cause hearing pursuant to Rule 39 Section 5 which provides for such a procedure after receiving a letter of caution and concomitant notice on May 17, 1977 that he was to vacate the camp car wherein the disturbance occurred. Five members of the Camp Car submitted to the Assistant **Road-**master individual complaint letters asserting that Claimant threw and **broke** a light bulb that splattered in an **employee's** face and played his radio incessantly in a loud and boisterous tone, **notwithstanding** their requests to lower it. The hearing was held **on** July 14, 1977 and Carrier informed Claimant on July 21, 1977 that the investigative record fully supported its finding that he was not treated in an unfair and discriminatory **manner**. This disposition was appealed on the property and **is** presently before this Board for appellate consideration.

In reviewing this case, we concur with Carrier that Claimant wasn't treated unfairly. **In** fact, we find that he **visibly** manifested a belligerent and uncooperative attitude that made shared **living** difficult. The investigative transcript does not reveal that **his** co-workers actively or subtly **provoked** him, but instead clearly demonstrates that he couldn't develop a cooperative relationship with them. We won't belabor the importance of cooperative **deportment** under the unique conditions of Camp Car assignment, but note for the record that continued and perhaps intensified discord could only adversely affect **employee** morale and performance quality. Claimant's behavior was palpably provocative and the resultant dispute on May 12 was predictably **inevitable**.



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On the other hand, we do not **find** that this incident represents what is considered a classic example of disciplinary **misconduct** since Claimant was able to perform his **assigned** work. But the evidence does show that he provoked the May 12 incident and could not get along with his fellow **employees**. The letter of caution was not an unreasonable response given the critical nature of Camp **Car** assignments **and** his correlative removal from that car at that time was an appropriate and practical solution. Because of this finding, we will deny Claimant's request that the letter of caution be removed from his **personal** file, but we will remove the restriction precluding him from **returning** to this Camp Car. We do not believe at this time that **continuing** this restraint will **serve** any constructive purpose since the intended rehabilitative objectives have presumably been achieved. The original crew, has in all likelihood been changed and Claimant, by now, **understands** the importance of group cooperation.

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 sustained in accordance with Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By **Order** of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

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