

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD** DIVISION

Award Number 22918  
Docket Number **MW-22904**

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:

(1) The discipline (reprimand) of **Trackman** B. L. **Madera** for alleged violation of '**Rule** No. **17**' on September 15, 1977 was capricious, arbitrary, unwarranted and on the basis of unproven charges /System File C-4(13)-BLM/12-39(78-1) J2/.

(2) **Trackman** B. L. **Madera's** record be cleared of the charge, he be compensated for all wage loss suffered and reimbursed for expenses incurred **in** connection with attending the hearing."

OPINION OF BOARD: Claimant was assigned to Mobile Road Gang 8592 with headquarters in camp cars when the involved incident **took** place on September 15, 1977.

**He** was later directed by letter, dated September 21, 1977 to attend an investigation in connection with the altercation and charged with violating **Rules** 11, 17 **and** 18 **of** the Carrier's Safety Rules for Engineering and Maintenance of Way Employees, effective, September 1, 1967.

**On** October 7, 1977, shortly after Carrier officials **evaluated** the investigative record, Claimant was notified by letter that he was specifically found guilty of violating Safety Rule 17, for using obscene language while on company property and this disposition was appealed pursuant to Agreement provision. Safety Rule 17, which is referenced in **toto** hereinafter, provides that: "Profane, indecent **or** abusive language is **prohibited,**"

In our review of the investigative transcript, particularly the precise pattern of events between **12:30** A.M. and 1:00 A.M. on September 15, 1977, we find that Claimant was disturbed, threatened, and **wilfully** struck without provocation by **Trackman** Washington and that his use of the word "hell" under these disquieting and unexpected conditions was not **inflammatory** or a further conflict precipitant.

The utterance of this word under these **circumstances** **and** considering the insult and provocation which he suffered certainly cannot be construed

as belligerent. **His** overall demeanor was not abusive, combative or insubordinate when measured against **Trackman** Washington's aggressive deportment and his **only** fault that night was **being** in the wrong place at the wrong time. We do not find, upon the record, that the spirit or intent of Safety **Rule** 17 was violated and as such we **must** sustain the claim.

**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 violated.

A W A R D

Claim sustained.

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

ATTEST:

  
Executive Secretary

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

