

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22933  
Docket Number **MW-23088**

Paul C. Carter, 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 Thirty (30) day suspension imposed **upon** and subsequent dismissal of **Trackman A. Black** was without just **and sufficient** cause **and** wholly disproportionate to the offense with which charged-**stem Files C-4(13)-AB/12-39 (78-17) J and C-4(13)-AB/12-39 (78-21) J/.**

(2) **Trackman A. Black** shall be returned to service with **seniority** and all other rights unimpaired, be compensated for all wage loss suffered and his personal record be cleared of the charges leveled against him."

OPINION OF BOARD: This case involves two issues: (1) a thirty-day suspension of **claimant**, and (2) dismissal of claimant. **At** the beginning we are confronted with the contention of the Carrier **that** as the cases were handled separately **on** the property, they should be handled separately before the Board. There is no proper basis for complaint in this respect. The combining of the claims for presentation to the Board **did** not expand or alter the claims. The Carrier has in no wanner **been misled.** **The Carrier's contention in** this respect is denied, and the **claims** will be handled **on** their **merits.** See recent Awards 22612, 22409 and **22499.**

As to the thirty-day suspension, the record shows that **an** investigation was conducted on February 1, 1978, in the office of **Roadmaster,** Jacksonville, Florida, **on** the charge:

" . . . . it appears you obtained permission January 9, 1978 to be off under false pretense, and for this absence through January 16, 1978, you are charged with violation of Bulletin No. 1, dated **September** 29, 1976, and Rule 17(b) quoted therein, of the Agreement between this **Railroad** and its employees, and with violation of those parts of Rule 18, dealing with dishonesty and making false **statements,** of the current Safety Rules for Engineering **and** Maintenance of Way Employees. "

Bulletin Notice No. 1, dated September 29, 1976, copy of which had been furnished to claimant, reads:

"The need for the position on each **and** every job on which you are assigned has been carefully considered and has been authorized based on each employee fulfilling his **assignment** daily. Absenteeism is disruptive to the orderly **manner** of completing daily tasks and will not be tolerated. Your attention is called to Rule 17(b) of the Agreement between the Railroad **and** its Maintenance of Way Employees, which is quoted below:

'An employee desiring to be absent from service **must** obtain permission from his foreman or the proper officer. **In** case an employee is unavoidably kept from work, he **must** be able to furnish proof of his inability to notify his foreman or proper officer.'

"It is your responsibility to obtain permission from your supervisor or other proper officer of the Company prior to any absence from a daily assignment. Such permission will **only** be granted where a valid **reason** exists and this authorization will be given to you in writing. In any case where permission to be absent from **your** daily assignment is not obtained in writing, you **must** furnish your foreman proof in writing of the **reasons** for such absenteeism on the morning of your return to duty. Such notice to the foreman must contain proof of **your** inability to properly notify him or other proper officer of the **Company** as well as the necessity for such absence, such as a **statement** from your doctor in case of sickness. Any failure on your part in reporting to duty each and every work day, unless permission is obtained from your foreman to be absent, will subject you to disciplinary **action**."

There was substantial evidence adduced at the **investigation** to support the charge against the claimant, and the Board finds that the thirty-day suspension was not arbitrary, capricious or in bad faith.

On February 21, 1978, the **Roadmaster** again **wrote the** claimant:

"In our post hearing investigation **into** statements made by you during hearing held on February 1, 1978, relating to your being absent without permission and being dishonest by making false statements, many discrepancies have been developed. While these discrepancies (were) in **your** direct testimony during this **hearing**,

"you are hereby charged with **making** false **statements** regarding matters under investigation and violation of the appropriate portion of General Rule 18.

"It has been further reported to **me and** discussed with you that on Tuesday, February 14, 1978, you did threaten your Foreman, Mr. J. E. Jones, with **bodily** harm. For this, you are hereby charged with violating those **parts** of General Rule 18 relating to vicious or uncivil conduct.

"General Rule 18 referred to above is contained in the current Safety Rules of Engineering and Maintenance of **Way** Employees. A hearing will be scheduled by the Division Engineer and you will be advised accordingly."

General Rule 18, referred to in the **Roadmaster's** letter of February 21, 1978, reads:

**"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."**

Following the **investigation**, that was conducted on March 7, 1978, claimant was notified of his dismissal from service on March 22, 1978.

The Board has carefully reviewed the transcript of the **investigation** conducted on March 7, 1978, and finds substantial evidence in support of the charge that claimant made false statements during the hearing conducted on February 1, 1978, in violation of General Rule 18. There was also substantial evidence in support of the charge that on February 14, 1978, claimant threatened his foreman with bodily **harm**. The **claimant** was guilty of conduct that simply **cannot** be condoned. The Carrier's action in dismissing him **from** the **service** was not **arbitrary**, capricious or unreasonable.

The **claim** will be denied in its entirety.

**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:

A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.

