

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22939
Docket Number 1-U-23034

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Louisiana and **Arkansas** Railway Company

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

(1) The dismissal of **Trackman** R. S. Reese was without just and sufficient cause and wholly disproportionate to the offense with which charged (Carrier's File 013.31-193).

(2) **Trackman** R. S. **Reese** shall be reinstated to his **former** position and shall be **compensated** for all wage loss suffered, including holiday pay, beginning January 28, 1978."

OPINION OF BOARD: Claimant, **R. S. Reese**, a **trackman** on Extra Gang 579, was dismissed from **service** on January 28, 1978, for refusing to place a frog under the wheels of a derailed car. Claimant alleges that he did not **know** how to do the job and that he was afraid to crawl under the car while the engine was attached to it. Carrier personnel allege that no danger existed. Claimant was asked three times to place the frog under the wheels of the car and refused each time. **He** was therefore dismissed from service for insubordination.

A careful review of the record of this case clearly reveals that claimant was not denied any substantive procedural rights and was offered a full and fair hearing into the matter. Also based on the record, it is the opinion of this Board that discharge from service is a more severe penalty than is called for by the facts of this case.

While this Board does not **condone insubordination and** especially the refusal of an **employee** to follow an order of his **supervisor**, there are occasions when such behavior should not result in an **employee's** discharge. This case falls within that category.

When the record is reviewed, it is apparent that the men on the extra gang were grumbling about having to do what they thought was the work of the wheel gang. The men had been working from 7:00 a.m. straight through until midnight when the incident in this case occurred. It was cold and wet, raining and sleeting. Claimant was directed to climb under a **derailed** car while an engine was attached to it. Claimant was a young railroad **employee**

who had not placed a frog under a derailed car in the past. When these facts, together with the fact that another **employee** also refused to climb under the car (even though he eventually did) are considered, this Board is led to the conclusion that all the mitigating circumstances that exist in this case **serve** to modify the penalty imposed. It is therefore the opinion of this Board that claimant should be restored to service with seniority rights unimpaired, but with no back pay awarded.

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~~ discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion of the Board.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.