

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award **Number** 22940
Docket Number **MW-23035**

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of **Way Employees**
(The **Kansas** City Southern Railway Company

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

(1) The dismissal of **Laborer** C. L. **Ford** was excessive and wholly disproportionate to the offense with which charged (Carrier's File 013.31-192).

(2) Laborer C. L. Ford shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: C. L. Ford, claimant, was a track laborer on Extra Gang 491 when he was discharged from service on January 31, 1978, for insubordination. A hearing was held into the matter. As a result, Carrier upheld his discharge. The stenographic record of that hearing has been made a part of the record of this case. A review of it reveals that claimant was not denied any of his substantive procedural rights and that a full and fair hearing **into** the matter was held. Claimant **was** not present at the hearing, even though he was properly notified of its **time** and place. He was represented by a union **official**.

A review of the record clearly indicates that claimant was guilty of insubordination **and** using vulgar language to his foremen and assistant foreman. This action, by itself, is grounds for **severe** discipline, up to **and** including dismissal from service. When this incident is viewed in light of claimant's **past work** record, it is clear that discharge from service is the appropriate penalty.

In just two years of employment with Carrier, claimant has been **reprimanded**, suspended, dismissed, and reinstated on a leniency basis and finally dismissed a second **time** for insubordination. Carrier has made every effort in an attempt to make a worthwhile **employee** out of **claimant**. Its efforts **have been** exhausted. It is the opinion of this Board that Carrier was justified in discharging claimant.

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. Pauls
Executive Secretary

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