

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22953
Docket Number MW-22888

Joseph A. Sickles, 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 suspension of thirty (30) days imposed upon **Trackman** D. G. **Johnson** was unwarranted and on the basis of unproven and disproven charges /System File C-4(13)-DGJ/12-39(77-27)J/.

(2) The claimant's record shall be cleared of the charge placed against him and he shall be reimbursed for all wage loss suffered."

OPINION OF BOARD: The Claimant was charged with a violation of **Rule 18**, which prohibits various acts of disloyalty, dishonesty, desertion, intemperance, **immorality**, vicious and uncivil conduct, insubordination, etc.

The **Claimant** was removed from service pending an investigation. As a result of the evidence developed at that hearing, the Claimant was suspended for thirty (30) days (including the time held out of service pending formal investigation).

The charges **stemmed** from certain of Claimant's conduct on August 17, 1977. After the Foreman had cautioned him that he was not properly performing his normal work activities, the Claimant left the work area - presumably to use the rest room - and he did not return for a lengthy period of time. Shortly thereafter, he took another break, and when the Foreman advised him to return to his duties, harsh language erupted and the **Foreman's** ability to instruct the Claimant **in** the performance of his duty was questioned by the **Employee** in rather strong terms. This was followed by an assertion that the **Claimant** made certain physical gestures with a shovel as he stated that he would perform physical violence upon the **Foreman** with that tool. Further unfortunate language ensued when the Foreman instructed the Claimant **that** he would be taken to the office.

Other individuals in the **immediate** area were unable to positively corroborate the testimony of either the **Foreman** or the **Claimant**, and although the **Claimant** denied that he threatened the Supervisor with the shovel, he admitted that he was angry and that it is possible that a

threatening motion could have been **made**.

Once again, we are confronted with a sharp credibility conflict between a Foreman **and** an **employee**. As has often been repeated by this Board, it is not incumbent upon us to resolve credibility issues, **inasmuch** as we are not present at the hearing to **observe** the witnesses as testimony **and** evidence was presented.

We are of the view that there is a sufficiency of evidence of record from which the Company could have concluded that the Claimant was an aggressor in this **matter** and, accordingly, we are disinclined to set aside the finding of guilt.

Nothing has been presented which suggests to us that the Carrier was arbitrary or capricious in assessing a thirty (30) **day suspension** in a case such as **this and**, accordingly, **we** will **deny** 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 Employee involved in this dispute are respectively Carrier and **Employee** 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:


Executive Secretary

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