

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23040  
Docket Number MW-23188

A. Robert Lowry, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way **Employees**  
(**St. Louis-San Francisco** Railway company

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

(1) The dismissal of **Equipment** Mechanics B. E. Hood and J. L. Wright was **unreasonable**, arbitrary and without just and sufficient cause (System File **B-1232**).

(2) The claimant.8 shall now be **allowed** the **benefits** prescribed in Agreement Rule **9(c)**."

OPINION OF BOARD: **This** claim involves an alleged altercation between Division **Engineer** B. M. Lutzenberger and **Messrs.** B. E. Rood and J. L. Wright, the claimants, both employed **as** Traveling Maintenance of Equipment Mechanics, on the **evening** of October **4, 1978**.

Both claimants were charged with violation of **Rule** 175 and the **first** paragraph of Rule 176 of Carrier's **Rules** for the Maintenance of Way and Structures, and were dismissed from service on October 7, **1978**. Formal investigation **was** held on November 2, **1978**. A copy of the transcript of the hearing was made **a** part of the record.

Rule 175 and the first paragraph of Rule 176 read **as** follows:

"175. Civil, **mannerly** deportment is required of all **employees** in their dealings with the public, **their** subordinates, and each other. **Boisterous, profane** or **vulgar** language **is** forbidden. Courtesy and attention to patrons is required. **Employees** must not enter into altercations with any person, no matter what provocation may be given, but **will** make note of the facts and report to their **immediate** superior."

"176. **Employees** who are negligent or indifferent to duty, insubordinate, **dishonest, immoral, quarrelsome,** insolent or **otherwise** vicious, **or** who conduct themselves and handle their personal obligations **in** such a way that the railway will be subject to criticism and loss of good **will**, will not be retained in the service."

The record clearly shows that an altercation occurred on October **4, 1978**, in the restaurant of the Pine **Forest Motor** Lodge and in the parking lot between Division Engineer Lutsenberger and the claimants.

The testimony of both claimants confirmed the altercation and their part **in** it. **Carrier** witnesses also confirmed claimants' **involvement in** the altercation, their use of **vulgar** and profane language as well as threatening Lutsenberger verbally and with a **wooden** stick or club one inch **in diameter** and 24 inches long. The Board **finds** the evidence produced at the investigation shows claimants were in violation of Carrier's Rules 175 and **176**.

Claimants contend the altercation was Provoked by Lutsenberger. If claimants' contentions were correct they failed to conduct themselves in **accordance** with provisions of the last sentence of Rule 175, quoted above, **and it is too late** now for retribution.

The record shows **claimants were** reinstated on May 21, **1979**, without back pay with the **right** of the Organization to press this **claim**.

The **Board finds** that the record contains sufficient probative, credible and competent evidence to support the **Carrier's** action. There is **no proper** basis for the Board to interfere with the discipline imposed.

**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.

Award Number.23040  
Docket Number MM-23188

Page 3

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Claim denied.

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

ATTEST:   
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.