

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23077
Docket Number MW-23225

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis Southwestern Railway Company)

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

(1) The dismissal of Laborer Donny Ray Williams for alleged 'insubordination' was without just and sufficient cause and on the basis of unproven charges (System File MW-79-8-CB).

(2) Laborer Donny Ray Williams shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered,"

OPINION OF BOARD: On December 7, 1978, Mr. D. R. Williams, the claimant, was dismissed from the service of the Carrier for insubordination when he failed to follow the Instructions of his foreman. The Carrier charged claimant with violation of Rule 801 of Rules and Regulations for the Government of Maintenance of Way and Engineering Department Employees, reading in part as follows:

"Employees will not be retained in service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious . . ."

Claimant requested and was granted a hearing under the rules of the applicable Agreement. The hearing was held, after one postponement, on December 19, 1978. Copy of the transcript of the hearing was made a part of the record. Claimant was represented at the hearing by a representative of his choice as prescribed in the Agreement. He had two witnesses testify in his behalf. A careful study of the transcript reveals claimant received a fair and impartial hearing.

The question before this Board is whether claimant was insubordinate and quarrelsome when he refused to respond and return to work upon the first instructions from his foremen. Claimant was part of a gang working on a switch in the Pine Bluff gravity yard when it started to rain, he, along with others, sought shelter. Apparently when the rain subsided the foreman gave Instructions to return to work and claimant refused to do so until after he was ordered to do so the second time. When he did return an argument ensued and there was a question

as to whether **claimant threatened the foreman** with a spike maul.

X-1
As a result of these **developments** the foreman ordered claimant to leave the work scene **and** return to the tool house where he would **receive** a dismissal letter. **Claimant refused to leave voluntarily requiring the** foreman to obtain the **assistance** of the special agent **to remove him from** the property. While several witnesses, **including the claimant's, testified** they **observed** an argument taking place between claimant **and** the foreman, none, other than the **foreman, testified** that claimant threatened the foreman. Claimant contended that he was singled out by the foreman **as** there were others **h**er shelter **from** the rain at the time he was **ordered out to** work. This **was** not refuted by the **Carrier**.

C-2
The Board **finds** the evidence clear that **claimant was insubordinate** in that he failed to promptly follow the instructions of his **foreman** and when he did so he was quarrelsome and argumentative by his **own** testimony. We **find** him **guilty** of the **charges**.

C-3
~~Insubordination is a serious offense, however, in view of the~~
~~entire record, we feel claimant should be given another chance. We, therefore,~~
award his reinstatement with **full seniority and all other rights unimpaired,** but without back **pay,** and, with the further condition that this **award be** **made** a part of his personal record.

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

Award Number 23077
Docket Number MW-23225

Page 3

That the **discipline** imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

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

ATTEST:

A. W. Pauls
Executive Secretary

Dated at **Chicago**, Illinois, **this 21st** day of November 1980.