

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Carter, Referee

Award Number 23115
Docket Number m-23284

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The Carrier, without just and sufficient cause improperly disciplined Trackman T. L. Hannah on charges that

(a) he was allegedly insubordinate on November 3, 1978 (System File TRRA 1978-45);

(b) he was allegedly insubordinate on April 11, 1979 (System File TRRA 1979-30).

(2) Trackman T. L. Hannah be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered including overtime pay."

OPINION OF BOARD: Claimant was employed as a track laborer in Carrier's District Gang No. 2, under the jurisdiction of Track Foreman John Davis and Track Supervisor D. S. Stogner.

The Carrier contends that the claims as submitted to the Board by the Organization were handled on the property as two separate claims, were improperly combined in the submission to the Board, and, therefore, should be dismissed. The Board finds no proper basis for the complaint of the Carrier in this respect. The combining of the claims by the Organization in one submission did not expand or alter the claims, nor was the Carrier misled. See Awards 22480, 22499, 22611 and 22612.

On November 3, 1978, the gang was engaged in repairing track at the south end of C.D. Yard, which had been damaged by a derailment. During the afternoon Supervisor Stogner went to the work site and instructed the foreman to keep the gang at the location until the repairs were made. The Carrier contends that as a result of the Supervisor's instructions, which may have required the gang to work Overtime, claimant informed the Supervisor that he would not work overtime, left the job site and later used vulgar and profane language to the Supervisor.

On November 7, 1978, claimant was notified by the Assistant Chief Engineer: .

'You were **removed** from service about **1:30** P.M., Friday, November 3, 1978, pending the **outcome** of a hearing that will be held at 9:00 A.M., Friday, November 10, 1978, in the Conference Room **in** building located at **#137** East **Bremen** Ave., St. Louis, Missouri to determine the facts and your responsibility, if any, in connection with your being insubordinate to your Track **Supervisor**, Don Stogner, Sr., at approximately **1:30** P.M., Friday, November 3, 1978 while working as Track Laborer.

"Arrange to be present. You are entitled to representation and witnesses **in** accordance with Rule **#24** of the current Agreement between Terminal Railroad and the Brotherhood of Maintenance of Way **Employees.**"

By agreement the hearing was postponed and conducted on November 16, 1978. On November 29, 1978, claimant was advised that he was disciplined sixty (60) days without pay, the suspension beginning on November 3, 1978.

On April 12, 1979, claimant was notified by the Assistant Chief Engineer:

"You were suspended from service on or **about** **7:30**A.M., Wednesday, April 11, 1979 pending the outcome of a **formal** investigation (hearing) that will be held at **1:30** P.M., Wednesday, April 18, 1979 in the Conference Room located in building at **#137** East **Bremen** Avenue, St. Louis, Missouri to determine the facts and your responsibility, if any, in connection with your being insubordinate to your Track Supervisor, Donald S. **Stogner**, on or about **7:30** A.M., Wednesday, April 11, 1979, while working as a Track Laborer in C. D. Yard.

"Arrange to be present. You are entitled to representation and witnesses in accordance with Rule **#24** of the current **agreement** between the Terminal Railroad and the Brotherhood of Maintenance of Way **Employees.**"

The hearing was held as scheduled and on April 26, 1979, claimant was notified of his dismissal from the service.

Transcripts of the hearings conducted on each charge have been **made** a part of the record. A review of the transcripts shows that none of claimant's substantive procedural rights was violated. There was substantial evidence in support of the charge in each case. There is **no** proper basis for the Board to interfere with the discipline imposed by the Carrier.

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 **Carrie?** **and** **Employes** 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 **January 1981**.