

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23129**
Docket Number **MW-23045**

James F. Searce, 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 discipline (30 days' suspension) assessed **Trackman B. L. Smith, Sr.** was **without** just or sufficient **cause**, unwarranted and in violation of the Agreement. /System File C-4(13)-BLS/.

(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 dispute culminating in this Claim centers on the intent of Carrier management as related to events on October 6, 1977. On that date the **Claimant**, as a member of a **Rail Gang**, reacted negatively to admonishment by his supervisor for he and the other **members** of his crew to pick up the pace of work. (This crew was removing tie plates **and** plugging the holes as part of the gang's overall responsibility to replace jointed rail with **ribbon rail**.) The Claimant advised he could **not** work any faster than he was going and asked for a transfer to another crew -- a request **that was** denied. **His** continued negative response to a return to *work* at a stepped-up pace drew a decision from the Carrier to stop his time. **Later on** that day, he was issued a letter which identified his earlier actions as a refusal to work, as **having** walked off the job and as having quit. Subsequent discussions and correspondence resulted **in the** Carrier's planned **termination of the** Claimant's service to be altered in favor of permitting **him** to return; the **30-day** period he was out of service was not to be compensable. Thus, the dispute arises over the **period** of time the Claimant was out of service which the Organization considers a disciplinary suspension, without pay, **and** which the **Carrier contends** resulted **from** a voluntary withdrawal from **service and** ended by a display of the Claimant's desire to return to work.

This case turns on the intent of the **Claimant** and actions of Carrier supervision on October 6, 1977. Obviously this **Board** cannot divine **the** actual events of that confrontation. Thus, it is obliged to assess the 'testimony of the principles involved -- the Claimant and two (2) supervisors. **In** so doing, we are led to the conclusion that the basis for the Claimant's termination of service arose out of his unwillingness to react positively to management's

admonition to pick up the pace. If the Claimant was physically incapable of performing the work as assigned, he would have been better advised to bring this to the attention of **management** at the outset of work **that** day. Instead, **the** discussion with the foreman came in mid-afternoon. **While** the loss **in** compensation to the Claimant as a result of this incident is considerable, we find no reason to intervene since this Board views the events of **October** 6, 1977 not as a disciplinary action, **but** rather as an acquiescence on the Carrier's part to the Claimant's intent **to** withdraw from service rather **than** pick up the pace of work. As such, however, **we** conclude that his personnel file **and** work record should **not** reflect or imply any disciplinary action. The period the **Claimant** was out of service should be credited to him for seniority purposes and should only be cited as a time period for which no pay was received.

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 disposed of in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **15th** day of **January** 1981.

