

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23285
Docket Number MW-23369

Paul C. Carter, 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 **dismissal** of **Trackman R. E. Hodges** for alleged insubordination and vicious and uncivil conduct was without just and sufficient cause and wholly disproportionate to such an offense (System File **37-SCL-77-68**).

(2) **Trackman R. E. Hodges** shall be returned to service with seniority and all other rights **unimpaired** and shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed by the Carrier as a **trackman**, with about six years of service. At the **time** of the occurrence giving rise to the dispute herein he was assigned to **Extra Gang No. 9206**. On the morning of November 21, 1978, while the Foreman **was** in the depot, the gang was left in charge of the Assistant Foreman. A controversy arose between the claimant and the Assistant Foreman about getting **water**. Claimant was held out of **service**, pending an investigation on the charge:

"...with violation of the following Rules for Engineering and Maintenance of Way **Employees**:

Rule 17; which reads as follows:

'Profane, **indecent** or abusive language is prohibited.'

That portion of Rule 18; which reads as follows:

'Vicious or uncivil conduct or insubordination will subject the offender to dismissal.'

The investigation was conducted on November 29, 1978, as scheduled. Claimant was **present** throughout the investigation and was represented by the General **Chairman** of the Organization. A copy of the transcript of the **investigation** has been made a **part** of the record. A review of the transcript shows that the **investigation** was conducted in a fair and impartial **manner**. None of claimant's **substantive** procedural rights was violated.

There was substantial evidence in the investigation that **claimant** used vile and profane language to the Assistant **Foreman**, and actually threatened him. **His** dismissal **from service** on December **12, 1978**, was **justified**. 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.

A W A R D

Claim denied.

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

ATTEST:

A. W. Paulson
Executive Secretary

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

