

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23312  
Docket Number MW-23307

Josef P. Sirefman, Referee

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

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

(1) The dismissal of **Trackman** Daniel R. Bale for alleged violation of Rule 176 was without just and sufficient cause and wholly disproportionate to the charge leveled against him (System Pile B-1867).

(2) **Trackman** Daniel R. Bale shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant Daniel R. Bale, was employed by the St. Louis-San Francisco Railway Company on October 21, 1978 and on March 7, 1979 was a **trackman in** System Tie Sang T-1-10. On that day he was dismissed for violation of Rule 176:

"**Employees** who are **negligent** or Indifferent to duty, in-  
**subordinate**, 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."

An **investigation** was held on **March 29, 1979** resulting in the  
**Claimant's** permanent dismissal.

An **examination** of the record at the hearing reveals that on March 7, 1979 Claimant had **failed** to pull seven spikes **over** a fifty foot length, that he had been **warned** before that **his** spike pulling rate was slowing the work of the gang and that he had to work faster. Claimant offered conflicting reasons for missing spikes, on the one hand that some of the crew were not doing **their** job and on the other that he tries to get every spike but doesn't see some. However, at no time did he deny missing the spikes on that day. Although in service but five months, Claimant has been warned by supervision on **sane six occasions** about his rata of work and has been moved to all types of jobs which **apparently he** cannot perform. **He requires** constant supervision, time which the foreman should devote to other duties. There was substantial evidence to sustain the Carrier's decision, and in view of Claimant's poor record over a short period of employment dismissal was not unreasonable.

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. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1981.

