

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23348
Docket Number MW-23373

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 **Bridgeman C. J. Randolph** for alleged violation of Safety Rules Nos. **17, 18 and 26** was without just and sufficient cause and wholly **disproportionate** to such a charge (System File **C-4(13)-CJR/12-39(78-28) J**).

(2) **Bridgeman C. J. Randolph** shall be reinstated with seniority and all other rights **unimpaired, his personal** record cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, with about seven years of service, was employed as a **bridgeman** on **Bridge Gang 8731**. The gang was headquartered in camp cars, and, at the time of the occurrence giving rise to the dispute herein, was stationed at **Carrier's Lakeland Shops**. The cars were parked on tracks adjacent to the Engine House at **Lakeland**.

At approximately **5:00 P. M., June 15, 1978**, after the force had completed its week's work, the claimant was using the shop water and air to wash his personal vehicle. When this was noticed by shop supervisory personnel, the **Shop Foreman and General Foreman** shut the water off and advised claimant that he could not use shop water to wash his personal vehicle; that shop employees were not allowed to do so; and that the claimant would not be permitted to do so. The **Carrier** contends that claimant took violent exceptions to the advice and used gross, obscene and totally uncalled for language to the **General Foreman**, as a result of which he was advised by the **Master Carpenter** on **June 19, 1978**, that he was held out of service pending a formal investigation of the incident that occurred on **June 15, 1978**.

On **June 20, 1978**, the claimant was charged by the Division Engineer:

"Referring to Mr. **J. L. Hartley's** letter of **June 20, 1978**, concerning your actions at approximately **5:00 P. M., on Thursday, June 15**, same resulting in charges having to do with Safety Rules for **Engineering and Maintenance of Way Employees**. These charges are:

"No. 17: Profane, indecent or abusive language is prohibited.

"No. 18: ...that portion which reads: '...vicious or uncivil conduct...will subject the offender to dismissal.*"

"No. 26: . . .that portion which reads: **'Unauthorized employees and others not having legitimate Company business to transact are prohibited from entering or loitering about railroad . . .yards . . .shops . . .and other properties. Persons so observed must be reported to supervisor.'**

"A hearing **is** set for 10 A.M., Wednesday, June 28, 1978, **in my office at 4020 Adamo Drive, Tampa, Florida,** to determine your responsibility in this matter, at which time **your personal record will be reviewed.** You may have any **witnesses** or representatives present allowed under the **terms** of the agreement; however, **their notification and attendance will be your responsibility.**"

The investigation or hearing was held as scheduled, **as** a result of which claimant was **dismissed** from the **service.** A copy of the transcript of the **investigation has been made a part** of the record. A careful **review** of the record shows that none of **claimant's** substantive procedural rights was **violated.** **Claimant** was present throughout the **investigation** and was represented. The investigation was **conducted** in a fair and impartial manner.

There was substantial **evidence** adduced at the investigation in **support** of the charges against the **claimant.** **Claimant** clearly used profane, indecent and foul language addressed to the **General Foreman.** The **discipline** imposed by the **Carrier** was not arbitrary, **capricious** or in bad faith. 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 **Employee** involved in this dispute are respectively **Carrier** and **Employee** 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.

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~~Claim~~ denied.

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

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at **Chicago, Illinois, this 14th day** of **August 1981.**