

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23350
Docket Number MW-23379

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) ~~Trackman W. L.~~ Jackson shall be ~~compensated~~ for all wage loss suffered beginning with November 2, 1978 and continuing until he is reinstated and restored to service with seniority and all other rights unimpaired because of the Carrier's failure to hold and ~~conduct~~ an investigation in ~~compliance~~ with the procedural requirements of Rule 2, Sections 1 and 2 (System File 37-SCL-77-66/12-39 (79-7) J1) ."

OPINION OF BOARD: In this dispute the ~~Board~~ is faced with a scarcity of ~~facts~~, but an abundance of contentions and counter contentions.

It seems to be agreed that at the time of the ~~occurrence~~ giving rise to the dispute, claimant was assigned to Carrier's Timbering Force 8490, which was headquartered in camp cars located at Douglas, Georgia; while in the dining car on the evening of November 1, 1978, a disagreement occurred between the claimant and the cook concerning the size of claimant's serving of food (meat) in comparison to ~~other~~ members of the force. ~~Apparently~~ the disagreement got rather hot, with profanity being used. ~~The~~ Foreman, who ~~was~~ in the adjoining kitchen car, came into the dining car in an attempt to quell the ruckus.

There is dispute between the ~~parties~~ as to what was said to the ~~claimant~~ by the Foreman, the Organization contending ~~that claimant was~~ suspended from the service by the Foreman, and was, therefore entitled to a disciplinary hearing under Rule 39. The ~~Carrier~~ contends that ~~claimant was~~ instructed by the Foreman to report to the Roadmaster; that he did not do so, and, therefore, was considered as having quit the services of the ~~Carrier~~. The ~~Carrier~~ also contends before the ~~Board~~ that if claimant felt that he was unjustly treated, he should have requested a hearing under Section 5 of Rule 39. The Organization contends that Section 5 of Rule 39 was intended to deal with matters entirely different from the kind involved herein; that under Section 1 of Rule 39 an ~~employee~~ who has been in the service sixty calendar days or more will not be disciplined or dismissed without a proper hearing as provided in Rule 39. The Organization also contends that the ~~Roadmaster's~~ office was located some thirty-five miles away; that the Foreman did not furnish claimant transportation for the seventy mile round trip to the ~~Roadmaster's~~ office nor did he authorize payment or other means of transportation in the absence of transportation being furnished.

This Board has no way of reconciling the fundamental differences as to what was said to the **claimant** by the Foreman during the discussion in the dining car on November 1, 1978.

After careful consideration of the entire record before the Board, it is our opinion that the ends of justice would be served by awarding that claimant be given an opportunity to return to the service, with his seniority and other rights **unimpaired**, but without compensation for time lost while out of the service, **provided that he reports within ten days from date** of notice sent to him by certified **mail** at his last known address.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

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

