

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Award Number 23429**  
**Docket Number MW-23479**

**A. Robert Lowry, Referee**

**PARTIES TO DISPUTE:** { **Brotherhood of Maintenance of Way Employees**  
{ **Missouri Pacific Railroad Company**

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

(1) **The dismissal of Trackman R. L. Benton** for alleged insubordination was without **JUST and sufficient** cause and was wholly disproportionate to the charge leveled against him (Carrier's File **S 310-280**).

(2) **Trackman R. L. Benton** shall be reinstated with seniority, **pass and vacation rights unimpaired and shall be** compensated for all wage loss suffered,"

**OPINION OF BOARD:** Claimant **R. L. Benton** was employed as a **Trackman** by the **Carrier with** a seniority date of January 20, 1978. On February 1, 1979, Claimant was working a position as **Trackman** on Gang 5492 near **Hume, Texas**, when he refused to comply with instructions from his supervisors to operate a air hammer to drive spikes.

**Charges** were filed against Claimant and he was ordered to appear for formal Investigation on February 5, 1979. The investigation was held as scheduled, a copy of the transcript of the investigation was made a part of the record.

A careful study of the entire record, including the transcript, reveals that Claimant refused to obey Instructions from three supervisors. About 4:00 p.m. on February 1, 1979, the Assistant Foreman Instructed Claimant to operate the air hammer to drive spikes. Claimant refused explaining that he had operated the air hammer the previous day but **had bent** spikes and for this reason refused to follow his supervisor's instructions. The Assistant Foreman reported the incident to the Foreman, who personally instructed Claimant **three** times to operate the air **hammer** and also offered to instruct him in its operation. Claimant still refused. The Foreman reported this to his supervisor, the **Roadmaster**, who **came** to the Gang and he offered to show Claimant how to operate the machine three times but Claimant adamantly refused. At this point he was removed from service pending **investigation**.

A review of the transcript of the Investigation reveals Claimant was represented by his General **Chairman** and they were given the opportunity to provide witnesses to support their position but declined. They were given every opportunity to examine and cross **examine Carrier's** witnesses. It is evident Claimant was given a fair and impartial hearing.

The Board finds **and** concludes Claimant failed to obey reasonable instruction **clearly** Issued in line with his assigned duties and he **adamantly** refused to accept help offered by **his** supervisors to assist him in the operation of the air hammer. **This** was clearly an act of insubordination on the part of Claimant, therefore, the claim **must** be denied.

**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

*A. W. Paulson*

ATTEST:

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

