

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23430
Docket Number MW-23481

A. Robert Lowry, 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 Foreman J. **H.** Matthews from the service of the Carrier **was** based on unproven and disproven **charges** and was arbitrary and **capricious** (System File C-4(13)-JHM/12-39(79-47) J).

(2) Claimant Matthews' personal record shall **be** cleared of the charges; he shall be reinstated to his former position with seniority and all other rights **unimpaired**; he shall be compensated for all **earnings** loss suffered as a result of his dismissal; and, further, that he be reimbursed for all necessary expenses incurred by him in connection with attending the hearing.'

OPINION OF BOARD: **The** Kaiser Agricultural Chemical Company at Acme, North Carolina **owns its** tracks and **apparently** leases a **locomotive** to perform its switching. At **times** the Carrier is called upon to perform emergency maintenance work, such as but not **limited** to, replacing broken rails and **rerailling** derailed equipment. Mr. **J. H.** Matthews, the Claimant, was employed as a Section Foreman by the Carrier at Acme. On April 20, 1979, the Carrier was informed by **Kaiser** that it had received the following bills, all dated April **19, 1979**, from Section Foreman Matthews:

- (1) To **repair** broken rail - No. 3 Track
March, 1979
1 Foreman
5 men
85 lb. rail - \$100.
- (2) To **reraill** tank car - **Enginehouse** track
February, 1979
4 hours labor
1 Foreman
4 men labor - \$150.
- (3) To **reraill** tank car - Hill track
March, 1979
2 hours labor
1 Foreman
1 man - \$50.

The Carrier upon receipt of this **information**, being unaware of the services performed by Claimant., determined that it was necessary to **conduct** a **formal** Investigation to develop facts concerning the situation. On May 7, 1979, charges were **filed** against Claimant and ordered him to **attend** formal hearing on May 16, 1979.

Claimant was charged as **follows**:

"Please arrange to attend formal hearing to be held at **1:00 PM on Wednesday, May 16, 1979, in Conference Room** of the Lumberton Public Library, 101 N. Chestnut Street, **Lumberton, N. C.**, to determine the facts and place your responsibility, if any, **in** connection with report received that work was performed for Kaiser Agricultural Chemicals at **Acme, N. C., and** SCL material used at a time when your payroll indicates that you and your Section **Force** were under pay by SCL Railroad. Specifically, that **Kaiser** Agricultural chemicals at Acme received billing from Jack H. Matthews for the use of labor and/or material used to repair track and **reraill** equipment on the dates of February 15, 1979, February 16, 1979 and March 8, 1979.

"You are charged with violation of that portion of Rule G-1 pertaining to 'dishonesty' and 'making false statements' and Rule 709 of the **SCL Railroad Company's** Operating Rules effective December 4, 1978, and with that portion of Rule 18 pertaining to 'dishonesty' and 'making false statements of the **SCL** Safety Rules for Engineering and **Maintenance** of Way Employees effective September 1, 1967."

The investigation was held as scheduled. Copy of the transcript of the investigation was made a part of the **record**. Claimant was represented by the Vice Chairman of **his Union** and they were accorded the right to produce witnesses, which they **did**, and to examine and cross **examine** witnesses which was done extensively. A careful reading of the transcript reveals Claimant was given a fair and **impartial hearing** as required by the rules of the Agreement between the parties.

It was **a long and tedious journey through a confusing transcript** but it is clearly evident Carrier proved it's case. The work **in** question was **performed** by Claimant and his crew when they were under pay by the **Carrier**. Claimant **attempted** to defend himself by claiming the work Involved was performed on days other than those **claimed** by Carrier When he was not on **Carrier's** payroll, **His** own two witnesses, Robinson and Rhodes, members of **his** section gang, did not support **this** position and it was further disproved by Witness Johnson of the Kaiser **Company**. Claimant and **his two** witnesses, Robinson and Rhodes, also **testified that Trainmaster Hall was present during** the period some of this work was being performed **and** that Hall has given Claimant instructions to how to file **his** claim for this work with Kaiser and that he was **merely** following the **Trainmaster's** instructions. **This** testimony proved to be false when the two witnesses,

Robinson and Rhodes, later volunteered statements that such evidence on their part was false. Both received thirty days suspension without pay for giving false statements at the investigation. **It was proven Trainmaster Hall was** not present during the **period** in question, nor had he given Claimant any such instructions as claimed.

The record clearly shows **Claimant making improper monetary** claims upon the Kaiser **Company** for work that he and his crew had already been fully compensated for by the **Carrier**. **Clearly violating Carrier's Rules** cited in the Charges and for these reasons the discipline imposed by **Carrier** should not be disturbed.

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.

ATTEST:



Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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