

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23472
Docket Number MW-23233

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of **Trackman** R. K. Screven for alleged violation of Rules 15 and 18 was without just and sufficient cause and wholly disproportionate to the offenses with which **charged** (System File **37-SCL-77-55**).

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

OPINION OF BOARD: **Claimant**, **Trackman** R. K. Screven, was charged **on** July 31, **1978** with conduct on July 28th. 1978 which violated that part of Carrier's Safety Rule 15 reading "Employees must work in harmony with associates", and Rule **18** that "**Desertion**, insubordination, will subject the offender to dismissal". A hearing was held on August 2nd and **Claimant** was dismissed **from** service **on** August 16, **1978**.

A review of the record before this Board establishes that **grievant** was "cussing and fussing" in general end against the **Foreman** in particular, and reluctantly followed orders only after they were repeated several times. There was substantial evidence to sustain the Carrier's decision to discipline. However, given the nature of the offenses the penalty of termination is too severe. Accordingly Claimant is to be returned to service but without any back pay.

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 Employes involved in this dispute are respectively Carrier and Employes 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 assessed was excessive.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1.981.

