

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23489
Docket Number MW-23490

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 **Trackman C. D. Howard** was without just and **sufficient** cause and Wholly disproportionate to the offense with which charged (System File **C-4(13)-CDH/12-39(79-15)J**).

(2) **Trackman C. D. Howard** shall be returned to **service** with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Mr. **C. D. Howard**, the Claimant, Was employed as a **Trackman** by the Carrier on its Timbering and Surfacing Gang No. **9053** working in the vicinity of Sanderson, **Fla.** On September **19, 1978**, Claimant **became** involved in a verbal altercation with Assistant Foreman Nettles and Foreman Cobb for which he was charged by the Carrier with **violation** of General Rule **18** of the Safety Rules for Engineering and Maintenance of **Way Employees**. **Formal hearing was set for and was conducted on October 13, 1978**, following which, on October **30, 1978**, Carrier dismissed him from service.

General Rule **18** reads as follows:

"Disloyalty, dishonesty, desertion, intemperance, **immorality**, vicious or **uncivil** conduct, insubordination, sleeping on duty, incompetency, making false statements or concealing matters under investigation will subject the offender to dismissal."

Claimant was charged with those portions of the General Rule relating to intemperance, vicious or uncivil conduct and insubordination.

A copy of the transcript of the hearing Was **made** apart of the record. A careful reading of which indicates Claimant Was accorded a fair and impartial hearing as required by the agreement. **He** was represented by his General Chairman and Vice Chairman of his Organization, permitted to present witnesses of his choice and to cross examine witnesses of the Carrier.

Claimant had been absent, apparently Without prior authority, from work on Monday, September 11, **1978**, and he had presented a receipt covering the **purchase of a** battery for his car as an excuse for being absent. The receipt was **kept** by his **supervisor** but he **had** been **promised** its **return**. **The** receipt was needed by Claimant in **connection** with the battery warranty. Also, **Claimant** was a semi-pro borer and had requested to be off duty Thursday

to prepare for a match that weekend. About 12:30 P.M. on September 19, 1978, Claimant approached Assistant Foreman Nettles who was eating lunch with For- Cobb and Assistant Foreman Douglas and inquired about his request to be off Thursday and the return of the receipt. When Nettles informed him that he, Nettles, would have to talk to his new Foreman, Cobb, before he could let him know about being off on Thursday and the disposition of the receipt, Claimant became abusive. Claimant threatened Nettles with vile and profane language and walked away. About fifteen minutes later Claimant was called back by Nettles who had in the meantime discussed the matter with Cobb, the For-, and he was informed that he could not be spared from work on Thursday. At this point Claimant got into an argument with Cobb and again used abusive and profane language and picked up an iron bar which was interpreted by those witnesses present that it would be used in physical violence against Cobb. Claimant was ordered off the property which he at first refused to do. The Roadmaster summoned assistance from the Sheriff's office but it was not needed.

The witnesses testifying for Carrier clearly proved the charges. Claimant was **intemperate**, vicious, uncivil, insubordinate and engaged in verbal assault upon his **supervisors** and threatened physical violence with what could have been a deadly **weapon**.

The Organization in defense argued that there was an inexcusable delay in returning the receipt for the car battery which irritated the Claimant triggering the incident. Irrespective of the delay it cannot **justify** or off set the abusive, threatening and insubordinate conduct of **Claimant**.

Based on the entire record, the Board finds that Carrier's actions in **dismissing Claimant from** service were not arbitrary, capricious or in bad faith. **The claim will, therefore, 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.

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~~Claim~~denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *A. W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.

