

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23528
Docket Number MW-23921

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company
(Northern Region)

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

(1) The dismissal of Trackman Martin R. Haack for alleged insubordination and conduct unbecoming an employee was without just and sufficient cause and wholly disproportionate to such charges (System File C-D-875/MG-2686).

(2) Trackman Martin R. Haack shall be allowed the remedy prescribed
(■ Rule 24(e))

OPINION OF BOARD: The claimant herein was employed by the Carrier as a trackman, and had about two years of service at the time of the occurrence giving rise to the dispute herein. On November 14, 1979, he was notified:

"Arrange to attend a hearing in the office of Supervisor of track, 900 Starkweather Road, Plymouth, Michigan at 10:00 A.M., Wednesday, November 28, 1979.

"You are charged with insubordination for failure to comply with a Supervisor's instructions and conduct unbecoming an employee at approximately 7:30 A.M. November 9, 1979, at Plymouth.

"Arrange for representation and/or witnesses if desired."

The hearing was conducted as scheduled, and a copy of the transcript has been made a part of the record. Claimant was present throughout the investigation and was represented. In the investigation claimant's representative stated that he protested the hearing because of lack of a precise charge. It is noted that Rule 24(b) of the applicable Agreement does not contain the word "precise." However, the Board concludes that the charge quoted above was sufficiently precise to enable the claimant and his representative to prepare a defense. It notified claimant of the action complained of, the time, date, and place. The charge met the requirement of the rule and the investigation was conducted in a fair and impartial manner.

There is substantial evidence in the investigation that claimant refused to stop blowing the horn of the bus, that he was driving to take the men to the work site, when instructed to do so by the Supervisor of Work Equipment. The horn stopped blowing when a mechanic disconnected the horn wire.

There is also substantial evidence that claimant used foul and abusive language to the supervisor.

The Board finds substantial evidence in the investigation to support claimant's dismissal from the service. The Carrier's action was not arbitrary, capricious or in bad faith.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds as follows:

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

ATTEST: A. W. Poulos
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1982.