

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23585
Docket Number MW-23495

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 T. G. Bartee was without just and sufficient cause and wholly unwarranted (System File C-4(13)-TGB/12-39(79-29) J).

(2) Trackman T. G. Bartee 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. T. G. Bartee, the Claimant, was employed by the Carrier as a Trackman and was assigned to Extra Gang 8584, when, about 3:00 P.M. January 22, 1979, after the crew had inspected a passing train, the Foreman, in a voice loud enough to be heard over the noise of an operating backhoe, called the crew back to work pulling ties. Claimant took exception to the manner in which he and the crew were called and engaged in a vile and profane verbal attack on the For- which incident was witnessed by the Roadmaster and Assistant Foreman who also became subject to the same verbal abuse. Claimant was suspended pending investigation and on January 24, 1979, was charged with violation of General Rules 17 and 18 of Carrier's Safety Rules for Engineering and Maintenance of Way Employees in that he used profane, indecent and abusive language and engaged in vicious and uncivil conduct toward his For- as well as being insubordinate.

Rules 17 and 18 of the Carrier's Safety Rules read as follows:

"17. Profane, indecent or abusive language is prohibited."

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

Formal investigation was held on February 2, 1979, copy of the transcript was made a part of the record. A careful examination of the transcript reveals Claimant was given a fair and impartial hearing. Claimant's suspension from service was confirmed by dismissal on February 12, 1979.

The evidence developed at the investigation confirms Carrier's charges that Claimant did use profane language and engaged in vicious and uncivil conduct towards his supervisors, and by doing so, was insubordinate.

The Board after thorough study of the entire record including the ramifications ~~surrounding~~ the incident and the employee's record of only two letters of caution, finds and concludes that the penalty of three years without pay is sufficient. We, therefore, Award reinstatement without back pay but with all other rights and benefits restored. This decision should not be interpreted to **indicate that** this Board condones the use of profane language, the practice of uncivil conduct towards supervisors or insubordination by any employee, and for these reasons, we order that this Award be **made** part of the employee's personal record as a warning to him and to assist the Carrier in any future similar misconduct by this employee.

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 **discipline** was excessive.

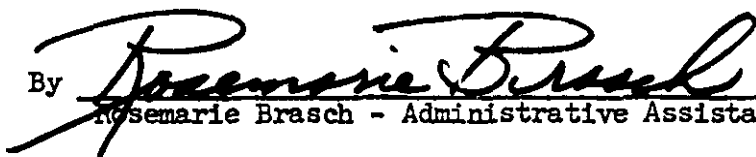
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 10th day of March 1982.