

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23865
Docket Number m-23927

Gilbert H. Vernon, 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** Henry Smith for alleged insubordination was without just and sufficient cause and wholly disproportionate to such a charge (System File **37-SCL-79-89/12-39(79-42)J**).

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

OPINION OF BOARD: On July 2, 1979, the Claimant, an Extra **Gang** Laborer, was directed to attend an investigation in regard to an alleged violation of the portion of Carrier Rule No. 18 relating to **insubordination**. The charges were made in connection with his alleged refusal, when instructed by Foreman H. M. Bryant, to help load a "frog" into a back of a pick-up and with his alleged refusal to accompany Foreman Bryant to talk to the Roadmaster about the incident.

In considering the evidence, we find that the Claimant's refusal to lift the "frog" is mitigated substantially. The evidence makes clear that the Claimant did not per se **refuse** to load the "frog" but suggested that it was too heavy to lift by hand and more or less suggested it be lifted with the aid of jacks. The Claimant was also concerned about injuring himself as he had recently recovered from a hernia operation. The Claimant's suggestion is particularly mitigating in light of Carrier Witness Coleman who testified that an attempt was made at **lifting** the "frog" by hand but that it proved to be heavy and **that it** couldn't be budged. He and **other** witnesses also testified that the "frog" was ultimately lifted by the use of jacks. The Supervisor's interpretation of the Claimant's so-called "refusal" as insubordination was hasty.

In respect to the Claimant's refusal to accompany the Foreman to see the Roadmaster we find the evidence is substantial. **The** Claimant clearly erred when he refused to comply with Foreman Bryant's directive.

While the Claimant's **insubordination in** refusing to accompany the Foreman is serious in and of itself, we believe the **lack of proof on the** other portion of the charge mitigates the situation as a whole to the degree that we believe permanent discharge to be excessive. We will therefore direct the Claimant to be reinstated with rights unimpaired but without pay for **time** lost. The Claimant will have this opportunity to show he has learned the necessity of

complying with the rules that require compliance with the directives of supervisors. It is well established that if an employee is aggrieved by the instructions of a supervisor he is obligated to comply now and grieve later.

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 violated.

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*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, **Illinois**, this 28th day of April 1982.

