

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23993
Docket Number MW-23855

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Missouri Pacific Railroad Company)

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

(1) The dismissal of **Trackman** Eric Merrlweather was excessive and wholly disproportionate to the offense with which charged (System File S 310-285).

(2) **Trackman Eric Merriweather** shall be allowed the remedy prescribed in **Agreement Rule 121(e).**"

OPINION OF BOARD: **Claimant Eric Merriweather, a Trackman,** received a Notice of Investigation in connection with his alleged failure to comply with the **instructions** of a General, and an Assistant Foreman, and "for **using profane** language on January 29, 1979..." An **investi-**gation was held on March 7, 1979 and Claimant was dismissed from service on March 9, 1979.

A review of the record before this Board establishes that Claimant received a fair and Impartial hearing, and further establishes that on January 29, 1979 he refused to perform his work assignment despite **directions from his supervisors, used abusive language, and made threats of physically harming** a Fore-. There was substantial evidence to sustain the Carrier's decision to **discipline Claimant** for these serious **infractions**. Given Claimant's five months in **service** and the severity and sustained **nature** of the **infractions on** that day, the penalty of dismissal **is** reasonable.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of September 1982.

