

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24123
Docket Number MW-24204

Edward L. Suntrup, 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** L. O. Holloway for alleged violation of Rules '**17**' and '**18**' was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File **C-4(13)-LOH/12-39(80-13)** H).

(2) **Trackman** L. O. Holloway shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant and Assistant Foreman J. G. Branch were charged with alleged violation of Rule 17 and Rule 18 of Carrier's Safety Rules for Engineering and Maintenance of Way **Employees** on August 29, 1979. Rule 17 and Rule 18 read, in pertinent part:

"17. Rofane, 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."

As a result of **an investigation** into these **charges** which was **held** on September 6, 1979 Claimant was discharged from service of Carrier on September 13, 1979 and Foreman Branch was **cleared** of **all charges**.

A close analysis of the hearing transcript shows that there is sufficient substantial evidence to indicate that Claimant did, in fact, **contravene** Rule 17 and Rule 18; that he used profane, vicious or abusive language, and that his conduct could have been deemed, at the very least, uncivil **toward** superiors was attested to by all three Carrier witnesses and by Assistant Foreman Branch. Further, Claimant himself, by implication, admits of breaking at least Rule 17 by the type of language used when he addressed Mr. Branch on August 29, 1979. Although this Board must deal with facts and behaviors rather than **nebulous** motives behind (in this **case**) behaviors, it does note the inconsistent evidence in the hearing transcript surrounding the reason(s) why **Claimant** addressed the Assistant Foreman in the manner in **which** he did; he claims he was provoked; others at the hearing pled ignorance to this. At **most**, in favor of Claimant's claim, is the statement by For- L. T. **Woolard** that they (Mr. Branch, the Assistant Foreman and Claimant) "... just have a personality conflict". Considerable precedent,

however, points to the fact that this Board, in its appellate role, is not to resolve cases dealing with clear-cut conflicting testimony (See Awards 9322, 10133, **10113** inter alia) nor is it, as stated in Award 21612, to substitute its judgment "... so long as the **testimony** of Carrier witnesses is not so clearly devoid of probity **that its** acceptance would be per se arbitrary and unreasonable ...".

The only issue to be resolved by this Board, therefore, is whether the penalty **imposed** by Carrier was reasonable. **This** Board has underlined in **numerous** prior Awards that the role of discipline is not only punitive but that it should also provide corrective and training measures for **employees** (See Second Division **6485**; Third Division 5372 and 19037 inter alia). In examining the record in the present **case** the Board notes that the Claimant has no prior record of malfeasance of any kind; this does not, in itself, justify his unwise actions on August **29, 1979**, whatever the reason for this behavior, but this prior unblemished work record does provide mitigating circumstances whereby, under the rule of progressive discipline, the Claimant may be given an additional chance to prove himself. Therefore this Board directs that Claimant be ret-d to service, but without back pay for time lost while out of service.

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

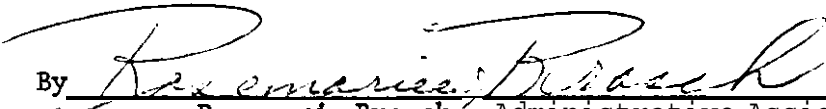
That the discipline was excessive.

A W A R D

Claim sustained in accordance **with** the Opinion.

NATIONALRAILROAD **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 14th day of January **1983**.