

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24221
Docket Number MW-24363

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(New Orleans Public Belt Railroad

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

(1) **The discipline** imposed upon **Trackman** George J. Row for alleged 'Insubordination, Disrupting the Gang, and being quarrelsome with Relief Foreman **Lennah** Turner' was without just and sufficient cause, unwarranted and on the basis of unproven charges (Carrier's File **013.7**).

(2) The claimant shall now be afforded the **remedy** prescribed in Agreement Rule **16(f)**."

OPINION OF BOARD: George J. Row, the **Claimant**, is a **trackman** with seven years of service with the **Carrier**. He was discharged effective September 2, **1980**, for insubordination, disrupting the gang and being quarrelsome with the relief foreman in an incident which occurred on August **29, 1980**. The Organization appealed the discharge, and as a result of a meeting held on January **13, 1981**, it was agreed to reinstate **Trackman** Row to his **former** position without pay for the time off. This **matter** is before the Board based upon the Organization claim the discipline imposed was without just and sufficient cause, unwarranted, and **unproven**.

The incident in question involved a roving, extra gang to which the Claimant was assigned loading ties into a dump truck. **There** is no question he and a relief foreman had **words**. Notwithstanding, the essence of the dispute involves conflicting stories concerning what actually took place. The relief foreman stated he had trouble with the Claimant who was talking to the other men and being generally disruptive. Claimant **was** told to do his **work, and** the matter escalated until **Claimant** challenged the relief foreman to settle their differences in the street. Despite the conflicting **testimony**, the Board is satisfied the record contains sufficient evidence to justify disciplining claimant. **Claimant** did not deny an incident took place and admitted the relief foreman told him to stop talking and go back to work. Recognizing the credibility issues involved, the Board has scrutinized this record and finds no basis to dispute the Carrier's finding of fact. Furthermore, considering Claimant's poor work record, the Carrier's assessment of discipline was a proper exercise of managerial judgment.

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.

A W A R D

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 14th day of **March 1983**.

