

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Amber 24387  
Docket Number MW-24570

Paul C. Carter, 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 Willie Mellon for 'being insubordinate to Roadmaster A. Luna' on November 7, 1980 was excessive and unwarranted (carrier's File S 310-391).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

**OPINION OF BOARD:** Claimant was a trackman, with about four years of service with the Carrier. At the time of the dispute giving rise to the dispute herein, he was assigned to Gang 5504, working in the vicinity of Vacherie, Louisiana, under the supervision of Track Foreman L. E. Hawkins and Roadmaster A. Luna. The Carrier contends that on November 5, 1980, claimant had been absent without permission.

The Carrier also contends that on November 7, 1980, Roadmaster Luna arrived at the work site of the gang at about 12:13 P.M. The Roadmaster advised the foreman to have claimant report to the Roadmaster's truck. Upon being instructed by the foreman to do so, claimant did not reply. The foreman repeated his instructions, but claimant did not respond and did not comply with the instructions. The Roadmaster then confronted the claimant and instructed him to report to the Roadmaster's truck. The claimant again did not respond and did not comply with the instructions. Claimant was then removed from the service and notified to report for investigation to be conducted on November 14, 1980:

"...to develop the facts and place responsibility, if any, in connection with your reported being insubordinate to Roadmaster A. Luna at mile post 47 pole 22 near Vacherie, Louisiana at approximately 12:13 pm November 7, 1980, while you were working as Trackman on Gang 5504 and for review of your personal record."

The investigation was postponed and conducted on December 16, 1980. A copy of the transcript of the investigation has been made a part of the record. The Board has reviewed the transcript, and finds that none of claimant's substantive procedural rights was violated, and that the investigation was conducted in a fair and impartial manner.

In the investigation there was substantial evidence by the foreman and the Roadmaster that claimant failed to respond to or comply with the instructions of the foreman and the Roadmaster. In the investigation claimant refused to answer any questions or provide any testimony in his behalf. His actions in this respect were at his peril. The Roadmaster testified that to his knowledge claimant could write and work.

The representative of the Organization objected to a review of claimant's personal record in the investigation. Such review of claimant's prior record was not in violation of the Agreement as prejudicial to claimant. The prior record shows that on July 27, 1979, claimant was dismissed for insubordination and reinstated on a leniency basis on October 5, 1979.

Based on the entire record before the Board, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier. Insubordination simply cannot be condoned. The rule has often been stated that employee must comply with instructions of their superiors, unless a proven safety hazard exists, and then handle through the grievance procedure if they consider that their agreement rights have been violated.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 26th day of May 1983.

