

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24389
Docket Number MW-24615

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 Benjamin Rogers for alleged 'conduct unbecoming an employe and for physically assaulting Section Foreman A. W. Basco and threatening his life with a knife' on September 25, 1980 was excessive and disproportionate to the charge levelled against him (Carrier's File S 310-392).

(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, who entered Carrier's service as a trackman on October 9, 1969, was assigned as a trackman to Gang No. 5509, under the supervision of Section Foreman A. W. Basco at Rosa, Louisiana. On September 26, 1980, he was notified to report for an investigation on October 2, 1980, on the charge:

"Report to Trainmaster's office at Addis, Louisiana for 9:00 a.m. Thursday, October 2, 1980 formal investigation to develop the facts and place responsibility, if any, in connection with the alleged charges:

- 1 . You were involved in conduct unbecoming an employee.
- 2 . That you physically assaulted foreman A. W. Basco and threatened his life with a knife.

while you were working as a trackman at Rosa, Louisiana on September 25, 1980 at approximately 12:35 p.m., on Gang 5509.

You are being held out of service pending formal investigation.

You must arrange for representatives and/or witnesses as desired by you."

The investigation was postponed on several occasions and held on December 16, 1980. A copy of the transcript of the investigation has been made a part of the record. At the beginning of the investigation, claimant's representative objected that the charge against claimant was not precise. The charge advised the claimant Of the conduct complained of, the time, date and

place of the occurrence, and was sufficiently precise to enable the claimant and his representative to prepare a defense. The charge met the requirement of the Agreement.

In the investigation it was developed that about 12:05 p.m., September 25, 1980, the gang to which claimant was assigned was allowed to take a twenty-minute lunch break. At about 12:25 p.m. the foreman instructed the men that it was time to return to work immediately, but claimant did not do so. About five minutes later the foreman asked claimant whether he understood the instructions to return to work. The claimant responded in foul and vulgar language directed to the foreman and, in effect, told the foreman to give them more time and they would return to work.

According to the foreman, when he again approached the claimant, about five minutes later, about returning to work, he was met with foul and abusive language by the claimant, who grabbed him by the throat and threatened to cut his head off. The foreman's testimony as to the foul and abusive language directed to him by the claimant, and claimant's grabbing him by the throat and threatening to cut his head off, was corroborated by another trackman in the gang.

There was substantial evidence produced at the investigation in support of the charges against the claimant. He was guilty of conduct that simply cannot be condoned. If he thought that the foreman's instructions were interfering with his lunch period, it was his obligation to comply and then handle through the grievance procedure if he considered his Agreement rights violated. He could not properly resort to the actions that he did.

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.

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claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
Rational Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1983.

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