

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24461
Docket Number MW-24148

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Southern Pacific Transportation Company (T&L Lines)

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

(1) The dismissal of Track Laborer L. W. Bandy for alleged violation of Rules 801 and 802 was without just and sufficient cause and on the basis of unproven charges (System File MW-80-132/287-17-A).

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

OPINION OF BOARD: On July 10, 1980, the Carrier dismissed **Claimant** from service for allegedly **committing** the two following instances of insubordination: 1) failing to perform work as instructed and, 2) failing to report to the District Manager's office as instructed. In addition, Claimant, a Laborer on Extra Gang 230, purportedly directed vulgar, profane, **and disrespectful** language at his Assistant Foreman. Claimant requested a formal investigation pursuant to Article 14 of the applicable Agreement.

At the investigation held on July 24, 1980, Claimant's version of the July 10, 1980 events sharply conflicted with the declarations of his supervisors. According to the Foreman of Extra Gang 230, Claimant insisted on constantly arguing with him. The Assistant Foreman told **Claimant** to stop bickering with his Foreman and to do his assigned work. **Claimant** allegedly responded to the Assistant Foreman with vulgar and abusive language. A short **time** later, Claimant said he was ill after the Foreman had denied Claimant's request that he be taken to a place where he could obtain some food. The Foreman permitted Claimant to leave the job site, but the Foreman specifically instructed Claimant to report to the District Manager's office before leaving the property. Instead of seeing the District Manager, Claimant went directly **home**.

Claimant stated he merely asked if he could obtain **some** food after he observed the Foreman having a snack about an hour before the scheduled lunch break. Even though the request was denied, Claimant testified that he continued to adequately perform his assigned duties. Also, Claimant said he truly became ill and asked to be relieved. According to **Claimant**, the Foreman gave **him** permission to go **home** and told him to bring a doctor's excuse when he reported back to work.

On July 25, 1980, the Carrier affirmed its previous decision to discharge Claimant.

The Carrier has presented substantial evidence proving that **Claimant** committed the charged offenses. By his own testimony, **Claimant** admitted that he kept badgering his Foreman when he should have been concentrating on his work. Even if Claimant was legitimately ill, he should have obeyed his foreman's order (to report to the District Manager) before going home. Though Claimant denies that he was told to report to the District Manager, this Board cannot resolve this conflict **in testimony**. The Carrier could reasonably decide to rely on the Foreman's testimony as opposed to Claimant's self-serving denials. Lastly, while profane language is commonly used by workers, **Claimant was** purposely directing his abusive language at the Assistant Foreman and **Claimant** intended to personally insult his supervisor.

During his short tenure, Claimant had accumulated a poor disciplinary record. **Claimant** had recently been dismissed for **committing** insubordination. He was reinstated to service on a leniency basis and the reinstatement was effective on the date the incident herein occurred. The prior discipline obviously had no rehabilitative effect since **Claimant committed** precisely the same offense on his first day back to work. Therefore, we find the assessed penalty was **commensurate** with the proven offense.

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 July 1983.