

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24462**
Docket Number **MW-24149**

John B. **LaRocco**, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (T&L Lines)

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

(1) The dismissal of Laborer L. J. Alexander for allegedly 'threatening Mr. J. M. **Pena**' on June **25, 1980** ~~was~~ without just and sufficient cause **and** on the basis of unproven charges (system File **MW-80-126/287-20-A**).

(2) Laborer L. J. Alexander shall be reinstated with seniority, vacation and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a Laborer at Houston, Texas, was **dismissed for** violating Carrier Rule No. 802 on June 25, **1980**. At the subsequent investigation held on July 25, **1980**, Claimant **specifically** denied that he had engaged in any misconduct. The Yard Foreman gave the following account of an incident which allegedly occurred on June **25, 1980**. At the beginning of Claimant's shift, the Yard Foreman and **Claimant** met with the Superintendent to discuss Claimant's dislike for certain job assignments. Later in the shift, Claimant approached the Yard Foreman; he threatened the Foreman; he followed the Foreman's car to a **fast-food restaurant; and, in** the restaurant parking lot, Claimant again threatened the Foreman while displaying **a** firearm. According to the Yard Foreman, Claimant stated that he would get the Foreman in retaliation for reporting him to the Superintendent. Two other witnesses testified that when the Yard Foreman returned from lunch, the Foreman was visibly upset as he related the details of his confrontation with Claimant. Claimant denied threatening the Foreman either verbally or with a weapon. He further stated that he had gone directly home for lunch without encountering the Foreman.

In this case, we cannot overrule the hearing officer's decision to attach more credibility to the Yard Foreman's testimony than to Claimant's blanket denials. In addition, there is sufficient evidence in the record which lends credence to the Yard Foreman's statements. First, the other two witnesses, who listened to the Yard Foreman as he told them about Claimant's threats, said the Foreman was obviously shaken by the **incident**. Second, Claimant had just been admonished at the Yard Foreman's tehest. Claimant was angry and sought to retaliate for what he believed was unfair treatment. These surrounding circumstances in conjunction with the Yard Foreman's testimony constitute substantial evidence that Claimant committed the charged violation.

Given Claimant's poor prior disciplinary record as well as the seriousness of Claimant's offense, we find no justification for adjusting the assessed penalty.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds end holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.

