

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24533
Docket Number MW-24555

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: {
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of **Trackman E. A. McKenzie** for alleged insubordination "as without just and sufficient cause (System File **C-4(13)-EAM/12-39(81-6) G2**).

(2) **Trackman E. A. McKenzie** shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall **be** compensated for all wage loss suffered..

OPINION OF BOARD: Claimant "as employed as a **trackman**, assigned to Extra Gang No. 8743, at Lakeland, Fla., under the jurisdiction of Foreman R. Jennings and Roadmaster F. **Osteen**.

On September 24, 1980, Extra Gang **No. 8743** "as assigned to work on switches at the north end of **Lakeland** Yard. When starting to **work**, about **7:30 A.M.**, Foreman Jennings instructed the **trackmen** assigned to the gang to pair off and work on the switches in groups of **two**. The Claimant "as instructed by the Foreman to **work** with **trackman T. A. Simmons**. According to the Carrier, Claimant refused to **work** with **trackman Simmons**, but at the time gave no reason to the Foreman or the Roadmaster for his refusal to perform **work** as instructed. He "as removed from service and charged with violation of Rule 18 of Carrier's Safety Rules for Engineering and Maintenance of Way Employes, which rule reads:

"18. Disloyalty, dishonesty, desertion, intemperance, immorality, **vicious** or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements or concealing facts concerning matters under investigation, will subject the offender to dismissal."

Formal investigation was conducted on October 1, 1980, following which Claimant "as advised that he "as dismissed from the service of the Carrier as of September 24, 1980. A copy of the transcript of the formal **investigation** has been made a part of the record. We have reviewed the transcript and find that the investigation "as conducted in a fair and impartial manner, and that none of Claimant's substantive procedural rights "as violated.

In the investigation the Foreman and the **Roadmaster** each testified positively that Claimant refused to **work** with **trackman Simmons**, as instructed, and at the time of the occurrence the Claimant would not give any reason for such refusal. The Foreman also testified that Claimant had previously worked with **trackman Simmons** and that he "as not aware of any problems that existed between the **two** men.

In the investigation, Claimant stated that he told Foreman Jennings and Roadmaster Osteen the reason that he did not want to work with **trackman** Simmons was because Simmons was unsafe to work with.

It is the duty of employees to comply with instructions of their superiors unless a real safety hazard is involved, and where an **employee** refuses to comply with instructions because of an alleged safety hazard, the burden of proving such safety hazard is upon the employees who invoke such defense. The record does not contain sufficient proof to justify any contention that **trackman** Simmons was unsafe to work with. Furthermore, there is no positive evidence to support Claimant's contention that at the beginning of the assignment he told the Foreman and the Roadmaster that his reason for refusing to work with **trackman** Simmons was because Simmons was unsafe to **work** with. **Trackman** Rose, when questioned by Carrier's conducting officer, stated:

=A I heard Mr. Jennings (the foreman) ask Mac to go down and **work** with T. R. Simmons and Mr. McKenzie said he didn't want to.

Q. All right, did he say I will not or I do not want to specifically what did he say?

A. I believe it was I will not.

Q. Did you hear **Mr.** McKenzie give any reason why he would not?

A. Not at that time, no.

Q. Did you hear him **give the** foreman or Mr. Osteen a reason at any time that day why he did not want to work?

A. Not that day, no, not to them.

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Q. And you did hear Mr. McKenzie say I will not work with him?:

A. Yes **sir.** "

Trackman Rose further testified:

*Q. **Mr. McKenzie** said that or asked you if you heard him tell. the foreman that Mr. Simmons was unsafe and I believe you said you did hear him say that, is that correct?

A. Yes sir. "

The testimony of **trackman** Rose speaks for itself.

There is no question that Claimant refused to perform work as instructed. There are conflicts in the testimony as to whether he gave the Foreman and the Roadmaster a reason for his refusal. It is **well** settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. There is nothing to prevent the Carrier from relying upon the testimony of its supervisory personnel in a case of this kind. Based upon the record, discipline was warranted for Claimant's actions on September 24, 1980.

Claimant's prior record was also far from satisfactory. He had previously been assessed two actual suspensions of sixty days each and was the Claimant in our Award No. 24175, in which a fifteen-day suspension was upheld.

Claimant's actions on September 24, 1980, coupled with his prior record, warranted the discipline imposed by the **Carrier**, and there is no proper basis for this Board to interfere.

FINDINGS: The Third Division of the Adjustment Board, after giving the **parties** to this dispute due notice of hearing and thereon, **and upon** the whole record and all the evidence, finds and holds:.

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


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.