

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24544  
Docket Number MW-24740

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** C. Kennedy for alleged 'failure to comply with Rules **E** and N of the Uniform **Code** of Safety Rules and Item 5 of the Conditions of **Employment**' was without just **and** sufficient cause and wholly disproportionate to the charge leveled against him (Carrier's File S 310-404).

(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, a **trackman**, entered Carrier's service on May 8, 1978. He was notified to report fir **formal** investigation to **be** held on February 25, 1981:

"... to develop the facts and place your responsibility, if any, in connection with the charge that at approximately 7:15 a.m. on February 19, 1981, **you** were argumentative and directed abusive language to General **Car** Foreman C. E. **Hale**."

At the request of claimant's representative, the investigation was postponed and conducted on March 11, 1981. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript **shows** that the investigation was conducted in a fair and impartial manner. Claimant was present throughout the investigation and was represented. None of his substantive procedural rights was violated. Following the investigation, claimant was notified of his dismissal **from** service on March 13, 1981.

Carrier's Rules E and N of the Uniform Code of Safety Rules, and Item 5, Conditions of **Employment**, read:

• RVLEE

**Employees** must render every assistance in their power in carrying out the rules **and** instructions. Courteous cooperation between **employees** is required for proper functioning under the rules **and** instructions.'

**"RULE N**

Employees must not enter into altercations, play practical jokes, scuffle or wrestle on company property.

Employees must not be:

3. Insubordinate
4. Dishonest
5. **Immoral**
6. Quarrelsome or otherwise **vicious.**"

"ITEM 5.

To familiarize myself with and to **observe** all rules and regulations **governing** the service to which I shall at any time be assigned; to maintain strict integrity of character; to faithfully observe the rules and/or policy **governing** the use or possession of intoxicating liquors or narcotics; and to perform my duties to the best of my ability..

The above-quoted rules were read into the investigation.

In the investigation substantial evidence was adduced by the Carrier in support of the charge against the claimant. While there were some conflicts in the testimony at the investigation, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing **officer**.

Claimant's prior record was far **from** satisfactory. **He** had previously **been** dismissed on **two** occasions and **reinstated on** a leniency basis **in** each case. He **also** had been suspended from service for twenty days for failure to protect his assignment.

Claimant's actions on February 19, 1981, coupled with his prior poor service record, fully warranted the discipline **imposed** by the Carrier.

**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:

  
Nancy J. Deger - Executive Secretary

Dated at Chicago, Illinois, this 4th day of **November**, 1983