

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24556
Docket Number MW-24226

John B. LaRocco, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad

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

(1) The dismissal of **Trackman A. M. Darensburg** for alleged insubordination on August 13, 1980 was without just and sufficient cause and on the basis of unproven charges.

(2) The claimant 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: On August 13, 1980, Claimant's Foreman instructed him to put tie plates on the rail. **Claimant**, a member of a Roving Extra Gang, grudgingly complied with the instructions. A short time later, the Foreman observed that Claimant had not completed the task. **Claimant** refused to lower the jack holding the rail because he did not have a lining bar. The foreman told Claimant to obtain a lining bar. Since Claimant still refused to release the jack, the Foreman directed Claimant to go home. At this point, the Track Supervisor joined the conversation. The Supervisor and the Foreman both related that Claimant himself insisted that he be discharged as opposed to serving a suspension. Thus, Claimant was dismissed from service.

Claimant timely requested an investigation, Although Claimant wanted a hearing and received due notice of the hearing, Claimant failed to appear at the investigation held on September 4, 1980.

The Carrier contends that Claimant committed insubordination. By failing to promptly obtain a lining bar, Claimant not only disobeyed his Foreman's direct orders but also left his assigned task unfinished. **Claimant's** insistence on being discharged shows that he holds an apathetic attitude toward his job. The Organization, on the other hand, argues that Claimant never actually told his Foreman that he would not finish putting on the tie plates. In addition, the Foreman appeared to be directing Claimant to perform work in an unsafe fashion. The jack can only be safely released with a lining bar. Since Claimant did not have the proper tool, he had a reasonable excuse of not completing his work.

Though Claimant did not affirmatively refuse to follow his Foreman's orders, his conduct conclusively showed that he had no intention of complying with the instructions. Lining bars were readily available at the job site. Instead of procuring a bar, Claimant stood around and argued with his Foreman. There is no evidence in the record establishing that the Foreman wanted Claimant to release the jack without using the proper equipment. On the contrary, Claimant had ample opportunity to obtain a lining bar but he simply refused to do so.

Furthermore, by advocating his own dismissal and by failing to attend the investigation which he requested, Claimant has demonstrated to this Board that he has no interest in maintaining his position with the Carrier. Due to Claimant's **cavalier** attitude, his short length of service (five months) and his poor prior disciplinary record, we must uphold the dismissal.

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 Acts, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

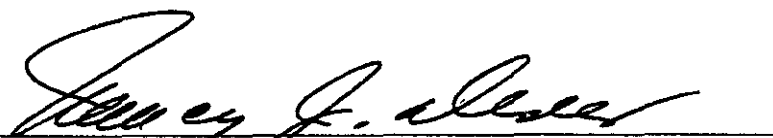
That the Agreement was not violated.

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 4th day of November, 1983

