NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24569

THIRD DIVISION

Docket Number M-24789

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation
((former Penn Central Transportation Company)

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

(1) The dismissal of Trackman T. P. Todd for allegedly 'Being absent from your assigned job site without proper authority' and for alleged 'Insubordination on July 2, 1980' was without just and sufficient cause (System Docket SD-6261.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges levelled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On July 2, 1980 claimant was employed as a track laborer in the area near Home Tower. Due to a prior injury to his hand he was incapable of working the regular assignment with his track gang. Thus, he was assigned to work alone on the track tightening track bolts. His assignment began at 7:00 AM but during the day he could not be found by his supervisor. Finally he was seen by another workman beside a track panel pile some 4 miles away from his assigned work area. On receiving this news his supervisor drove to the location to determine why claimant was not performing the work assigned. At 3:15 the supervisor found him at the track panel pile with a girl and instructed him to report to the office. Instead of complying with the order, claimant answered with a vile profanity and stated he did not have to do as the supervisor directed.

Claimant was next seen by his supervisor the next morning as he reported for work. The supervisor suspended him from service by letter as follows:

'Notification is hereby given that you are held out of service beginning 7:00 AM, July 3, 1980 in connection with:

1) Being absent from your assigned job site without proper authority.

2) Insubordination on July 2, 1980."

A hearing was held on the matter on July 22, 1980 and claimant was represented by the Local Chairman of the Brotherhood who participated by questioning witnesses. Claimant maintained he was hurt on the job on July 2. He stated he attempted to reach the tower to report the injury but met up with a number of circumstances which prevented him getting to the tower. He claimed a taxi hailed on a nearby road took him in the wrong direction. He was left in

the downtown area near the Bus Terminal. He never did report to the office as directed nor did he report his alleged injury to his supervisor when found with the girl near the track panel pile. When asked if he had used the profanity as accused his answer was, "I had no reason to." He denied he had been insubordinate.

Claimant had been employed about 5 years and during that period was dismissed on May 19, 1977 for being under the influence of intoxicant. The dismissal was later reduced to suspension. In another instance he was suspended 15 days for leaving company property without permission and insubordination. Insubordination and the use of vile and profane language has long been deemed adequate grounds for dismissal. Thus, Third Division Award 16074 states:

> "The orders of superiors must be obeyed***"
>
> "***The Carrier, of necessity, must have the right to require its employes to comply with the orders of those authorized to give them..
>
> "***This Board has consistently found that insubordination will support the discipline of dismissal,***"

On the matter of both the use of profanity and insubordination Award 4132 of the Second Division by Referee Anrod is also relevant to this case:

> '1. The term 'insubordination' usually refers to an employee's refusal to submit to the authority of a duly authorized supervisor and to obey his instructions. However, 'insubordination' may also be demonstrated by profane or vile remarks addressed to a supervisor by an employe. The right of an employer to take appropriate disciplinary action against au employe who is found guilty of either type of insubordination is beyond doubt.' (Emphasis added)

Claimant received a fair and impartial hearing as provided in the agreement. The evidence adduced during the investigation hearing is clear and convincing in support of the disciplinary action taken. Moreover, claimant's prior record supports the dismissal action. The dismissal action was for just and sufficient cause.

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 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1983