

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24571
Docket Number MW-24714

Paul C. Carter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Baltimore and Ohio Railroad Company

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

(1) The dismissal of **Trackman** J. A. Pugh for alleged "conduct unbecoming an employee, insubordination to officials of the Railroad, and having an altercation with officials of **the Railroad** Company on Monday, August 11, 1980" was without just and sufficient cause (System File 2-MG-2992/ERRG-1715).

(2) Claimant **J. A. Pugh** shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered and for all other Agreement benefits including **Health, Welfare and Dental Insurance** coverage.

OPINION OF BOARD: The Claimant was employed by the Carrier as a **trackman** in Carrier's rail gang working in the area of Fairfield, **Pennsylvania**. He had been in Carrier's service about ten months. On **August 23, 1980**, he was charged:

"**Arrange** to attend a hearing on September 2, 1980, at **9:30 a.m.** in the **Offices** of the Manager of Engineering, located in Room 300, Camden Street **Warehouse**, Camden and Eutaw Streets, Baltimore, Maryland.

You are charged with responsibility in conduct **unbecoming** an employee, insubordination to officials of **the Railroad**, and having an altercation with officials of **the Railroad** Company on **Monday**, August 11, 1980, in the vicinity of Fairfield, **Pennsylvania**. **The** investigation is to **determine** your responsibility, if **any**, of conduct unbecoming **an employee** and being insubordinate by **refusing** to perform your duties as instructed by your **supervisor on** the morning of August 11, 1980. You **were** again insubordinate to **Supervisor** van Kirk at about **4:15 p.s.** by refusing to leave the Camp Cars which were on company property as **instructed** by your **supervisor**. You then are charged with responsibility of **provoking** and having an altercation a **short** time after the episode in the Camp Cars off company property with **Supervisor Van Kirk** and **Lt. Maloney** of the **Railroad Police Department**.

Arrange for your representatives and/or witnesses to be present if desired."

The investigation was postponed and conducted on September 25, 1980. At the investigation, a transcript of which has been made a part of the record, it was developed that on August 11, 1980, the Claimant approached the Supervisor and requested that he be promoted to foreman. After questioning him as to his qualifications the Supervisor determined **that** Claimant did not have the requisite qualifications to handle a foreman position, and be so informed **the** Claimant. **Claimant** was then instructed to perform work as directed by the Assistant Supervisor, but refused to do so, stating that he was going to follow the Supervisor around all day to learn how to become a foreman. **Upon** Claimant's **refusal** to perform work as directed, he was removed from the service by the Supervisor, **who** returned him to the Camp Cars, and instructed **him** to get off the Company property. The Supervisor later returned to the camp cars and found that **Claimant** had not left, **at which time** the Supervisor instructed him to be off the camp cars by quitting time. An **argument** ensued, with the Claimant using loud and profane language to the Supervisor, and making vile, profane and indecent exposure and gestures to the Supervisor.

At the end of the **work** day, the Supervisor returned to the camp cars, with two members of Carrier's Police **Department**, and found that **Claimant** had **refused** to leave Company property as instructed. At that **time** Claimant wanted a written statement -verifying that he had been taken out of service. **When** the statement was offered by the Supervisor, he refused to accept it. **He** was instructed a second time to leave Company property, and again responded with belligerent remarks to the Supervisor, **and** again engaged in vile, profane and indecent exposures and gestures to the Supervisor.

The Supervisor and the representatives of the Carrier's Police **Department** then concluded to contact the Pennsylvania State Police for **assistance**. They left the scene of the **camp** cars and drove about a mile to a church parking lot, to await arrival of the State Police. A short time later, the Claimant and **two** other **trackmen** arrived at the church parking lot location, approached the Supervisor and one of the Police **Department** **employees** and Claimant entered into an altercation **with** the Supervisor, the evidence clearly **indicating** that the Claimant was the aggressor. During Claimant's Physical attack on **the** Supervisor, the State Police arrived, handcuffed **Claimant** and arrested **him**.

The **transcript** of the investigation is **replete** with evidence in support of the **charges** **against** the Claimant. The investigation, or hearing, was conducted in a fair and impartial **manner**. Claimant was guilty of conduct **that** cannot be condoned.

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

That the parties waived oral bearing;

That the Carrier and the **Employees** involved in this dispute **are** respectively **Carrier and Employe** 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

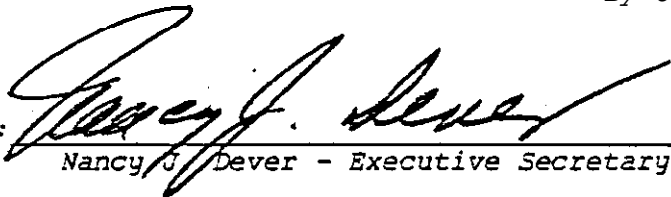
That the Agreement was not violated.

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 15th day of December 1983.