

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24643
Docket Number **MW-23705**

Herbert Fishgold, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Terminal Railroad Association of St. Louis

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

(1) The suspension of thirty (30) days imposed on **Trackman A. G. Hargrove** for alleged insubordination was without just and sufficient cause, excessive and in violation of the Agreement (System File **TRRA** 1979-37).

(2) **Trackman A. G. Hargrove** shall be compensated for all wage loss suffered including overtime pay.

OPINION OF BOARD: Claimant had two years of service with the Carrier when he was removed on July 30, 1979 for insubordination. A hearing was held on August 8, 1979, and by letter dated August 17, 1979, Claimant was informed that the charge was proven and a thirty (30) day suspension was assessed. Claimant returned to work on Friday, August 31, 1979.

The undisputed facts concerning the incident in question are as follows. Claimant is employed as a Track Laborer and was assigned as such to System Gang #6. On July 30, 1979 the regularly assigned foreman was absent and Relief Track Foreman **J. C. Gaines** was assigned to fill that temporary vacancy. That morning, System Gang #6 was engaged in gauging and tie renewal work on Track #5, south end of the Madison Eastbound Yard at Madison, Illinois. Claimant acknowledges that, sometime that morning, Foreman Gaines asked him to take a pick and dig a hole. The record contains conflicting testimony regarding the question of whether Claimant refused to do the work. Foreman Gaines claims that Claimant said he was not going to do the work. Claimant maintains that when he was asked to dig the hole, he decided to get some water, and that is when Foreman Gaines stopped his time. Claimant denies that he ever stated he was not going to do the work. In any event, based on this incident, Claimant was removed from service pending a hearing.

As a preliminary matter, the Organization contends that Claimant's removal from service pending a hearing was improper in that Rule 24(a) only permits suspending an employee pending investigation "if the offense is considered sufficiently serious," and that Claimant's alleged insubordination did not satisfy that condition. This Board has generally accepted the principle that a Carrier is justified in removing an employee from service only when it appears that the employee is a hazard to his own safety and the safety of others; when his misconduct was gross; or when failure to take the employee out of service would impede the Carrier in the proper and effective conduct of its business. See Award Nos. 22915 and 21447.

Under all the circumstances, including the fact that shortly after the incident, Claimant told Track Supervisor **McKeown** that when Foreman Gaines asked him to take the pick and dig the hole, Claimant laid the pick down, this Board finds that Claimant's removal from service was not arbitrary or capricious.

The Board is next asked to consider whether the **30-day** suspension is justified or excessive. In this regard, this Board is again being asked to review evidence and determine that Claimant's version of a disputed factual circumstance be accepted and that Carrier's version be rejected. In further support of its position, the Organization contends that an individual should not be found guilty of a disciplinary charge based upon the testimony of one witness.

Issues of credibility must be determined by those who received the evidence and testimony, and this Board would have no basis for substituting our judgment in that regard. Of course, such would not be the applicable standard if a record is devoid of any reasonable basis for a factual conclusion. But, that is not the case here.

Under the record presented, it cannot be argued that the evidence is incapable of supporting the Carrier's conclusions. Thus, Track Supervisor **McKeown**, although not present when Claimant refused to carry out Foreman Gaines' instructions, (was **told** **immediatley** thereafter by Claimant that after Foreman Gaines instructed him "to pick a **hole**," Claimant laid the pick down.

Under all the above circumstances, we find no basis for disturbing the findings and the discipline imposed.

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 **Employee** 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.

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Claim denied.

NATIONAL **RAILROAD ADJUSTMENT** BOARD
By **Order** of Third Division

ATTEST:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984