

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 24667  
Docket Number MW-24900

Paul C. Carter, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(**The Kansas City Southern Railway Company**)

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

(1) The Carrier, without just and sufficient cause and on the basis of unproven charges, improperly disciplined Mr. F. L. Grant on charges that:

(a) he allegedly refused to comply with instructions given him **by** Foreman J. Ingram and allegedly made vulgar remarks about Foreman Ingram and Assistant Foreman **Payton** on May 26, 1981 (Carrier's File **013.31-254**);

(b) he allegedly "as insubordinate to Foreman Ingram on June 24, 1981 (Carrier's File **013.31-255**).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, the charges **levelled** against him shall be stricken from his record and he shall **be** compensated for all wage loss suffered beginning September 15, 1981.

OPINION OF BOARD: Prior to his **dismissal**, claimant "as employed by the Carrier as a track laborer, assigned to **Extra** Gang No. 500, under the Supervision of Assistant Roadmaster L. R. Stout, **Extra** Gang **Foreman** Jimmy Ingram and Assistant **Foreman E. Payton**, when the incidents **here** involved occurred.

The Carrier contends that on May 26, 1981, while on duty in Extra Gang No. 500, claimant refused to follow direct and **specific** instructions of the fireman to perform work and made vulgar remarks to the foreman and assistant foreman. **On** July 8, 1981, claimant "as notified by the Division Engineer:

**"You are** instructed to appear at an investigation that will be convened commencing at 9:00 AM, Monday, August 3, 1981 in the **KCS** General Office Building, 4601 **Blanchard** Road, Shreveport, Louisiana to ascertain the facts and determine your responsibility in connection with the incident that occurred on **May 26**, 1981, when you refused to obey instructions given you by Foreman J. Ingram to assist Assistant **Foreman E. Payton** place tie plates and made vulgar remarks about **Foreman** Ingram and Assistant Foreman **Payton**.

I remind you of the following **from** the Rules and Regulations for the Maintenance of Way and Signal **Department** of **this** Company effective December 1, 1973:

**"From** General Notice: To enter or remain in the service is an assurance of willingness to observe the rules; and a failure or refusal to observe the rules justifies a removal from the service.

Rule B- They must have a proper understanding and obey all rules and instructions applicable to their duties.

Rule E - **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** who are careless of the safety of themselves and others, negligent, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not **be** subject to criticism or loss of good will, will not **be** retained in the service.

The **Company** intends to use Foreman J. Ingram as a witness in this matter.

You are advised that you have the right to have a representative of your Union present to represent you and to request that witnesses in your behalf be present."

The investigation was conducted as scheduled, following which claimant was suspended from the service for a period of sixty days, commencing September 1, 1981.

The record also shows that on July 8, 1981, claimant was further notified:

**"You** are instructed to appear at an investigation that will be convened commencing at **9:30 AM**, Monday August 3, 1981 in the KC5 General Office Building, 4601 Elanchard Road, Shreveport, Louisiana to ascertain the facts and determine your responsibility in connection with the incident that occurred on June 24, 1981 when you were insubordinate to Foreman Ingram in that you called him a liar and argued with him.'

(Cited in this notice were the same rules as cited in the notice involving the May 26, 1981, incident.)

Following investigation as scheduled in the second case, claimant was notified on September 15, 1981, of his dismissal from service.

The claims were handled as two separate and distinct disputes on the property, but were combined by the Organization in its **submission** to the Board. We have issued several awards upholding such procedure when the claims submitted to the Board were not expanded from the claims handled on the property, or the Carrier misled. We do not find the combining of the claims in the present dispute to be improper. See our recent Award No. 24607.

A copy of the transcript of the investigation conducted as a result of each of the charges against claimant has been made a part of the record. We have carefully reviewed each transcript and find that each investigation was conducted in a fair and impartial manner and that none of claimant's substantive procedural rights was violated.

In each of the investigations substantial evidence was adduced in support of the charges against the claimant. While there **were** some conflicts between the testimony of claimant and the testimony of others, 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.

The record also shows that during claimant's relatively short service, having entered Carrier's service February 6, 1979, his **work** record was far from satisfactory. It was entirely proper for the Carrier to consider claimant's prior record in arriving at the measure of discipline to be imposed in each of the present cases. His past employment record was referred to in the handling of the dispute on the property.

We do not find the actions of the Carrier in either case to be arbitrary, capricious or in bad faith. There is no proper basis for the Board to interfere with 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 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

Claimdenied.

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

Attest:

  
Nancy J. Levee - Executive Secretary

Dated at Chicago, Illinois, this 24th day of February, 1984