

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24732
Docket Number MW-25220

Paul C. Carter, Referee

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

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

(1) The dismissal of Track Laborer A. G. Hargrove for alleged insubordination on July 21, 1982 was without just and sufficient cause and on the basis of unproven charges (System File TRRA 1982-13).

(2) Track Laborer A. G. Hargrove shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to his dismissal, claimant was employed as a track laborer, assigned to District Gang No. 2, working under the jurisdiction of Track Foreman A. N. Sullivan, at East St. Louis, Illinois.

While working on July 21, 1982, the claimant is alleged to have used foul and profane language to his **foreman**. On July 23, 1982 he was notified:

"You were removed from the service at **2:15** P.M., Wednesday, July 21, 1982 for insubordination to your foreman, Anthony B. Sullivan, while working on track **#1** at the south end of Wiggins **#2** yard, E. St. Louis, Illinois.

A hearing will be held at **1:30** P.M., Thursday, July 29, 1982, in the conference room in General Superintendent's building located at north end Madison Westbound yard, Venice, Illinois to determine the facts and your responsibility, if any, in connection with you being insubordinate to your foreman, Anthony N. Sullivan, while working on Track **#1** at the south end of Wiggins **#2** yard, E. St. Louis, Illinois on Wednesday, July 21, 1982.

Arrange to be present. You are entitled to representation and witnesses in accordance with Rule 24 of the current agreement between the Terminal Railroad and the Brotherhood of Maintenance of Way **Employees**."

The investigation was postponed and held on August 3, 1982, following which claimant was dismissed from service by notice dated August 12, 1982. A copy of the transcript of the hearing has been made a part of the record. **From** our review of the hearing transcript, we find that the hearing was conducted in a fair and impartial manner. None of claimant's substantive procedural rights was violated.

Insubordination may involve **more** than a direct refusal **to** comply with instructions. It may involve the use of foul and abusive language, threats, altercations and similar offenses.

In the investigation held on August 3, 1982, the foreman testified that when he instructed claimant to perform certain work, start setting spikes, claimant responded with foul and profane language, and approached him with a shovel in what the foreman considered a threatening manner. Claimant admitted in the investigation that when the foreman instructed him to set spikes, he used vulgar and profane language, but denied that it was directed to the foreman.

In the investigation many irrelevant issues were discussed. However, there was substantial evidence that claimant did use vulgar and disrespectful language toward his foreman when instructed to perform certain work. As stated in Fourth Division Award No. 3984:

"It is well established that vulgar and disrespectful language to a supervisor constitutes insubordination."

Based upon the record in the present dispute, and claimant's prior discipline record, we do not find Carrier's action in imposing the discipline that it did to be arbitrary, capricious or in bad faith.

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

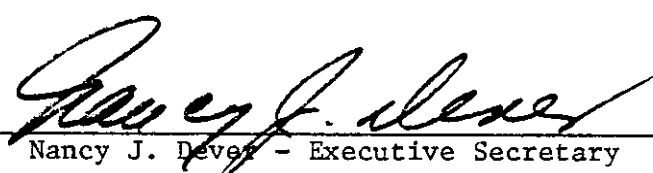
AW27831

Claim denied.

2002-31

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.