

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24765
Locket Number MW-24136

John B. **LaRocco**, Referee

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(Southern Pacific Transportation Company (T&L Lines)

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

(1) The dismissal of Track Laborer R. J. Mouton for allegedly "pulling a knife on and being quarrelsome with Foreman I. **Andrus** on February 7, 1980" was without just **and** sufficient cause and on the basis of unproven charges (System File MW-80-87/283-53-A).

(2) Track Laborer R. J. Mouton shall be reinstated with seniority, vacation and all other rights unimpaired, his record be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Following an Article 14 investigation, the Carrier dismissed Claimant, a Track Laborer, from service for allegedly quarreling with his foreman as well as threatening him with a knife. At the investigation, the Foreman and Claimant gave contradictory accounts of an incident which occurred at a local **service station** on February 7, 1980. The Foreman testified that he instructed Claimant to help a fellow **worker** fill the gang's drinking water keg. Though Claimant reluctantly complied with the order, he became hostile and began using profane language. While the Foreman was sitting in a Carrier vehicle, Claimant threatened him with a knife and attempted to incite a physical altercation. The Foreman emphasized that aside from giving Claimant the **order** regarding the water, he had not in any way **provoked** Claimant into reacting so belligerently. Claimant, on the other hand, denied that any argument or threats **were** made. Claimant related that he felt his Foreman was trying to humiliate him in front of a service station customer. According to Claimant, the Foreman had accosted him with a pocket knife when the gang was at Baldwin Depot. **Two** other members of the gang testified that Claimant started a heated argument **with** his Foreman but these witnesses were not in position to observe if Claimant produced a previously concealed weapon.

On October 28, 1983, this Board held a Referee Bearing on this case. Claimant was represented by an officer from the Organization as well as his personal counsel. Both Claimant and the Carrier were afforded an opportunity to present their respective positions and arguments.

After carefully considering the arguments advanced by the parties and after **reviewing** the record, we conclude that the Carrier presented substantial evidence proving that Claimant committed the charged offenses. This Board bases its decision solely on the facts contained in the record and in reaching our conclusion, we did not consider Claimant's prior record. The Foreman gave Claimant a simple order. There is no evidence indicating that the instruction constituted harassment as the gang daily loaded drinking water on its truck. If Claimant thought that the Foreman was trying to embarrass him or treated him unfairly, he should have remained **calm** and then utilized **the contract grievance machinery** to redress any harassment. Instead, he **impermissibly** resorted to self-help. There was no justification for his angry and potentially violent reaction.

As to the clear conflict between Claimant's testimony and the **facts as** related by the Foremen, it is **not** our province to resolve **credibility** disputes. **However**, the testimony of the other laborers strongly suggests that the Foreman's testimony was more credible than Claimant's blanket denials. **The** other track **gang** members unequivocally related that Claimant **was** boisterous, used profanity and argued with his Foremen. Though they were unable to observe if Claimant pulled a knife, their testimony corroborates the Foreman's version of the incident. Thus, the hearing officer could reasonably decide to attach more **weight** to the Foremen's testimony than to Claimant's denials.

The **final** issue before us is whether the assessed penalty was commensurate with the proven offense. Threatening a supervisor with a weapon merely because the supervisor issued a simple order is a grave offense warranting severe discipline. The Carrier has a duty to protect **all** its employees from unprovoked threats and attacks. In addition, while we did not consider Claimant's prior record in deciding whether or not Claimant committed the offense, the Carrier could take his prior record into account when determining the appropriate **penalty**. On September 15, 1978, the Carrier had discharged Claimant for quarreling with an Assistant Foreman and threatening his fellow workers. In **early** 1979, **the** Carrier reinstated Claimant on a leniency basis. Obviously, this prior discipline failed to rehabilitate Claimant who has demonstrated a consistent lack of respect for proper authority. **Due** to his poor prior work record **and** the seriousness of the offense, we **find no** reason to reduce the assessed discipline.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

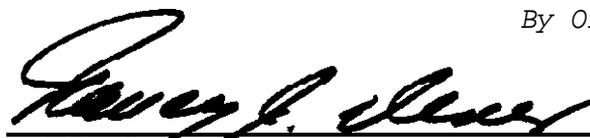
That the Agreement **was** not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984