NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24765

THIRD DIVISION Locket Number MW-24136

John B. LaRocco, Referee

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

STATEMENT OF CLAM: 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 then Claimant's blanket denials. The other track gang members unequivocally related that Claimant was boisterous, used profanity end 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 then 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 Foremen end 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, end upon the whole record end all the evidence, finds and holds:

That the Carrier end the Employes involved in this dispute are respectively Carrier end Employes 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; end

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 et Chicago, Illinois, this 13th day of April, 1984