

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25073  
Docket Number MW-25211

George S. Roukis, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(St. Louis Southwestern Railway Company

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

(1) The suspension of **Trackman** L. J. Burrow for alleged violation of 'Rule 801' was without just and sufficient cause and on the basis of unproven charges (System File SSW-D-1033/341-17-A).

(2) The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.'

OPINION OF BOARD: By certified letter dated, December 31, 1981, Claimant was informed that he was being suspended from service for five (5) days because of his involvement in an altercation on December 22, 1981. Specifically, he was charged with violating Rule 801 of the Rules and Regulations for the Government of **Maintenance of Way** and Engineering Department. The pertinent portion of this rule reads as follows:

'Employees will not be retained in the service who are ... **quarrelsome**, vicious or who conduct themselves in a manner which would subject the railroad to criticism.'

Claimant requested a hearing pursuant to Article 14 of the Controlling Agreement and said proceeding was held on January 27, 1982. Based **upon** the investigative record, Carrier affirmed its initial disciplinary determination and its decision was appealed by Claimant.

In defense of his petition, Claimant contends that he was not involved in the altercation that ensued between the several employees and the Special Railroad Agents. He asserts that he offered no resistance at the point of arrest. He avers that he was not vicious nor quarrelsome on the date in question, but fully **complied with** the agents' directives. He notes in particular the testimony of Special Agent R. H. Davies who stated at the hearing that while Claimant refused to leave the trailer, Claimant offered no resistance when the agents forcefully removed the employees.

Carrier contends that Claimant was guilty of the charged specification since he was present in the foreman's shanty when the Special Agents requested the involved employees to return to their residence trailers. It asserts that Claimant's remark heard by Special Agent R. H. Davies that, **"we built this railroad and no one is going to run us off"** is indicative of a disorderly disposition and avers that his latter presence in the trailer when the arrests were made demonstrates his misconduct. It notes that the employees **were** drinking in the foreman's shanty and a fight ensued which necessitated the presence of the Special Agents. Moreover, it maintains that when the employees refused

to comply with Special Agent S. L. Dubs' request to return to their trailers and were correlatively advised they would be arrested for trespassing, Claimant was present in the trailer when the arrests were implemented. It argues that Claimant's reluctance to comply with the requests of the Special Agents and his visible support of the employees reflects an explicit violation of Rule 801.

In our review of this case, **we** concur with Claimant's position. While the employees involved in the altercation with the Special Agents were unruly as a **group**, we find that the specific behavior of Claimant did not amount to the type of conduct proscribed by Rule 801. A detailed point by point analysis of the course of events that night show that inasmuch as Claimant was part of the group in the foreman's shanty and later in the trailer, he did not fight with any other employees nor reflect the bellicosity manifested by the other employees. There is conflicting testimony regarding whether Claimant uttered the remark, "**we** built the railroad and no one is going to run us **off**," but this statement was not **inflammatory** under the circumstances of its expression. Further, there is a presumption **that** another **employee** might have made this remark. More pointedly is Claimant's deportment when the arrests were made following the employees return from the foreman's shanty to the trailer. Although Claimant indicated he was not going to leave, he offered no resistance to the special agents. This is a pivotal consideration and it places in proper perspective Claimant's sum total behavior.

**Upon** these facts the Board must conclude that the evidence of record does not establish Claimant's guilt and thus, we are compelled consistent with our decisional precedents to sustain Claimant's petition. (See for example Third Division Award Nos. 15410, 24039 and 21293). We note that he was furloughed because of force reduction on January 5, 1982 and as such, his compensatory back payment should not extend beyond that date.

**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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD

By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.