

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25221

Docket Number MW-25308

James Robert Cox, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Seaboard System Railroad

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

(1) The dismissal of Bridge Helper W. E. Bellamy for alleged insubordination on March 24, 1982 was excessive and disproportionate to the charge leveled against him [System File 37-SCL-82-19/12-39 (82-1105) K3].

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Bridge Helper Bellamy was dismissed for insubordination March 24, 1982. Claimant was assigned to a Gang lining the Appomattox River bridge and, along with another employee, was instructed to get a pull bar and pull spikes. There was a need for the Bridge Gang to work quickly before the next scheduled train passed. The other employee complied but Claimant, according to the Assistant Foreman, responded, "Oh naw, I can't do that," walked to the end of the bridge, got some plugs and began to plug ties. At the hearing he contended that there were no pull bars available, a fact contested by the Foreman who himself was able to find a pull bar in the work area and, since the Gang was pushed for time, pulled spikes. The Gang had four bars at that time.

David Ricks, another employee in the Gang and a Bridgeman Helper, acknowledged that he heard Bellamy being told to get a pull bar as well as a response that he was not "gonna do a damn thing" followed by his departure from the area. He saw the Assistant Foreman turn, pick up a pull bar and begin pulling spikes. Ricks also testified that shortly after he heard the order to Bellamy, he was able to find a pull bar.

Taylor, a Machine Operator in the Gang, said that following the Assistant Foreman's instruction to get a pull bar, Bellamy responded, "hell no I ain't doing a damn thing" and walked off to the barrel bay fifty feet away.

Bellamy conceded that when asked to get a pull bar and to bring pulling spikes, he replied, "I ain't getting no pull bar." He explained that he had refused because all the pull bars were in use.

General Rule 18 of the Safety Rules of Engineering and Maintenance of Way Employees reads in pertinent part that:

"...insubordination...will subject the offender to dismissal..."

Claimant's record shows that in March, 1977 he twice refused to get an anchor wrench and start clamping anchors, using profane language. He received a written warning for this offense.

On another 1977 occasion, he did not check the oil in a machine or tighten bolts as instructed, telling the Mechanic assigned to the Gang that it was not his job. Claimant received a 26 calendar day suspension.

Both of these 1977 incidents involved violations of Rule 18. The workplace is not a debating society. **The** Board finds from the evidence that Claimant's refusal was not justified by any safety considerations and that, based on the testimony of Ricks and the Foreman, the explanation that there were no pull bars available was **pretextual**. Bellamy should have obeyed first and grieved later. In view of his prior discipline record the discipline was not excessive.

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~~ Carriers 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of **January** 1985.