

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25684  
Docket Number SC-25831

David P. **Twomey**, Referee

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

On behalf of Signal Foreman **J. W. Bundy** and Signalman **J. R. Ortiz**, Mobile Gang No. 1036, for reinstatement and pay for all time lost beginning **May 27, 1983**, following their dismissal as a result of an investigation conducted at San Antonio, Texas, on May 24, 1983.

[General Chairman files: **83-25-GD, 83-26-GD**. Carrier file: **K 225-948**]

OPINION OF BOARD: We have considered each of the Organization's contentions concerning procedural defects, and we have considered each of the Carrier's responses to these contentions. We find that a basis does not exist in the record before this Board to set aside the discipline imposed as contended by the Organization; and the Organization's procedural contentions are rejected.

**I**

Substantial evidence of record supports the Carrier's finding of major Rules violations in the case of Signal Foreman **J. W. Bundy**. While Mr. Bundy may well have intended to get "**eye to eye and toe to toe**" to verbally reprimand Mr. Ortiz upon arrival at the Holiday Inn after completing work, the evidence shows that he threw off his glasses and came at Mr. Ortiz in a very aggressive manner, with no expressed intent of verbally communicating with Mr. Ortiz. The testimony of Mr. Ortiz and Mr. Neal would indicate that he gave the appearance of intending to strike Mr. Ortiz. Should a Signal Foreman be subject to badgering or verbal abuse by a Signalman, the proper handling of such is to issue a warning to the **employee** and to inform supervision of what has taken place. We find that discipline in the form of a thirty-one (**31**) months' suspension would be appropriate. At the end of such period, or the effective date of the Order, whichever is later, he shall be reinstated with all rights unimpaired, but without **backpay**.

**II.**

Substantial evidence of record supports the Carrier's finding of major Rules violations in the case of Signalman Ortiz. The record indicates that he had been badgering and baiting Mr. Bundy during the afternoon and on the trip to the Holiday Inn after the completion of work, and this conduct helped to precipitate the altercation between Mr. Bundy and Mr. Ortiz which

resulted in Mr. Bundy suffering a 5 centimeter superficial laceration in the abdomen necessitating eight stitches to close. Mr. Ortiz's contention that Mr. Bundy came at him with a "window handle" was not corroborated by Mr. Neal and not believed by the Carrier. Mr. Ortiz's action which caused the above injury to Mr. Bundy on May 11, 1983 was intolerable. While both Mr. Bundy and Mr. Ortiz were responsible for conduct unbecoming an **employee** on May 11, 1983, there was not equal responsibility. In the case of Mr. Ortiz, we determine that discipline in the form of a thirty-seven (37) month suspension is appropriate. At the end of such period, he shall be reinstated with all rights unimpaired but without **backpay**. And, we want to make it absolutely clear to Mr. Ortiz that this is his last chance to prove that he can meet the requirements of the Carrier's service in a civil manner, that he can follow the directions of proper authority without bickering or baiting, and that he will not involve himself in any act similar in nature to the major misconduct involved in this case.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.