

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26208

THIRD DIVISION

Docket Number **MW-25791**

John B. **LaRocco**, Referee

(**Brotherhood** of Maintenance of **Way Employees**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak) -  
(Northeast Corridor

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

1. The suspension of **Trackman** T. **Piscione** for alleged violation of Rule 'I' on May 5, 1982 was without just and sufficient cause and in violation of the Agreement (System File **NEC-BMWE-SD-462D**).

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: on May 6, 1982, the Carrier withheld Claimant, a **Trackman**, from service pending an Investigation to determine if Claimant committed insubordination and threatened his Supervisor. Before the Investigation was convened, the Carrier reinstated Claimant to service on or about June 15, 1982. Following the June 29, 1982, Hearing, the Carrier suspended Claimant from service for thirty days but it gave Claimant credit for the time he had previously been held out of service.

At the Investigation, Claimant declared that on May 6, 1982, a fellow worker told him that the Foreman had talked about Claimant in disparaging terms. Venting his anger, Claimant confronted the Foreman who did not deny making the derogatory remark. Claimant was also upset that the Foreman had not promptly reported some overtime earned the previous day. According to Claimant, the Foreman never gave him an adequate response. The Foreman testified that Claimant called hfm insulting names, used vulgar language, threw his helmet on the ground and threatened him with physical harm. Another **Trackman corroborated** this portion of the Foremen's testimony. Despite Claimant's denials, the Foreman testified that Claimant raised his fist in a threatening manner. Evidently, the other **Trackman** was unable to observe Claimant's physical gestures. Claimant returned to his duties but he was pulled **out** of service a short time later. Although the Foreman asserted that he reported Claimant's overtime, the earnings did not appear on Claimant's next two pay stubs.

It is not the province of this Board to resolve conflicts in testimony or to pass judgment on the **credibility** of witnesses. The Carrier could attach more probative **weight** to the Foremans' declarations as opposed to Claimant's blanket denial. Thus, the record contains substantial evidence that Claimant was disrespectful to his Supervisor and that he, at least momentarily, threatened the Foreman. Moreover, Claimant admitted he was angry and another **Trackman** overheard Claimant's obscene language. Claimant's tirade resulted primarily from an uncontrollable temper. If he sincerely thought that the Foreman was harassing him or incorrectly reporting his time, Claimant should have resolved the dispute through the grievance procedure.

While Claimant committed misconduct, the record shows that the Foreman partially provoked Claimant. Furthermore, the amount of discipline was apparently premised on the length of time which Claimant had spent out of service. The verbal confrontation was brief and Claimant was ready to resume working. Even if the Carrier properly withheld Claimant from service pending the Investigation, the discipline was excessive. The suspension is reduced to fifteen days.

**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 **Employes** involved in this dispute are respectively **Carrier** and **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; and

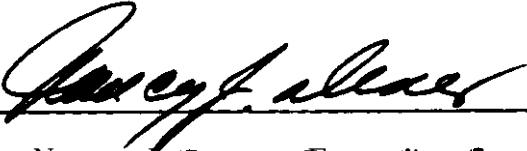
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.