

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(The Kansas City Southern Railway Company

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

(1) The discipline imposed upon Track Laborer E. Thomas for alleged responsibility in connection with a" altercation with Laborer C. L. Stanford on May 17, 1984 was arbitrary, capricious and without just and sufficient cause (System File 49-144).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier **or** carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction **over** the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant and other employees were directed to appear at a" investigative hearing to ascertain facts and determine responsibility in connection with "the altercation that took place at approximately **9:30** AM, May 17, 1984, in the vicinity of Mile Post 154." Following the hearing, the Claimant **was** dismissed from service on July 16, 1984, although the Carrier later restored him to service on November 6, 1984. Thus, the matter before the Board is the propriety of the resulting discipline, under which the Claimant was suspended from service for approximately four months. The other employee under charge was also reinstated.

The record of the investigative hearing leaves little doubt as to what occurred. Claimant, the other employee under charge, and several other employees were involved in setting track spikes. Either deliberately or by chance, the other employee spit, and his spit landed near where the Claimant was working. This led to some challenging curse words by the Claimant towards the other employee, following which the other employee struck the Claimant on the jaw.

There can be no doubt that both employees were properly found to be engaged in an "altercation," clearly prohibited by rule and by understood **principles** of expected employee conduct. The striking of the blow by the other employee was clearly the more serious part of the encounter. The **Claimant**, however, admitted guilt as to cursing the other employee for the alleged spitting incident. Disciplinary action was warranted as to both employees, but the Board finds that a suspension of nearly four months for the verbal encounter by the Claimant with the other employee was unduly harsh and disproportionate, particularly **in** view of the actual physical attack mounted by the other employee.

A **suspension** for one month was warranted, and the Carrier will be directed to make the Claimant whole for lost straight-time wages during the remaining period of his suspension.

A W A R D

Claim sustained **in** accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest::

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, **Illinois**, this 30th day of March 1988.