

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Houston Belt & Terminal Railway Company

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

(1) The dismissal of Track Laborer J. L. Nickerson for alleged failure to comply with the instructions of Section Foreman P. Carpenter, for allegedly being argumentative and insubordinate toward Section Foreman Carpenter and Roadmaster Davis and for alleged conduct unbecoming an employe on January 26, 1986 was unjust, unconscionable and in violation of the Agreement.

(2) The claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all other rights unimpaired 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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant was terminated following hearing and investigation into charges that he was insubordinate, quarrelsome and profane toward his Section Foreman and a Roadmaster on January 26, 1986. Review of the record evidence supports the finding that Claimant resisted instructions to pick up some ties, protested that other employes were not working as hard as he, and used profanity to express his upset. It is plain that Claimant did use strong "shop talk" and behaved inappropriately toward his supervisors. Even though perhaps offensive, however, the language he used is not uncommon in the vernacular of working men. Carrier need not condone or tolerate profane language and failure to comply promptly with appropriate orders of duly authorized supervisors

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acting within the scope of their legitimate authority. On the other hand, it appears that discharge of a seven-year employe for the offense involved herein was unreasonably harsh. In the circumstances, Claimant should be reinstated on a "last chance" basis, with seniority unimpaired but without backpay. He must understand that even if not directed specifically at supervisors, the use of such language in the circumstances presented herein was offensive and disrespectful.

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 August 1988.