Award No. 10404
Docket No. MW-11791

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it improperly withheld from service Hurley Fuggett, J. H. Jackson, Charley Martin, Jr., Richard Johnson and L. B. Mallice, beginning with September 3, 1959, and failed and refused to grant the aforementioned employes a fair and impartial hearing in compliance with the provisions of Rule 11.

(2) That each of the employes named in Section (1) of this claim be restored to service with seniority, vacation, pass and other rights unimpaired and that each of them be compensated for wage loss suffered in conformance with the provisions of Rule 11 (c) of the Agreement.

EMPLOYES' STATEMENT OF FACTS: For some time prior to September 3, 1959, the claimant employes had been working under extremely abusive conditions imposed upon them by Foreman J. L. Terry on Section #18 at Stuart, Florida.

The claimant employes reported for work on September 3, 1959, and, after working for a short period of time, advised the foreman that they could not continue to work under conditions as then existed and expressed a desire to contact the Track Supervisor in regard to the manner in which they were being treated.

The claimants were then instructed by the foreman to put the motor car in the tool house and said instructions were complied with. The claimant employes then got in touch with the Supervisor of Track at approximately 8:15 A. M., who instructed them to return to the tool house. The claimant employes complied with said instructions, returned to the tool house and were then denied the right to continue service.

Under date of September 8, 1959, a hearing was requested in behalf of the claimant employes in a letter reading:

September 3, 1959, and, having done so, no longer enjoyed any of the rights afforded by the agreement with the Brotherhood of Maintenance of Way Employes to members of that craft having an employment relationship with the Railway, as a consequence of which the Railway, contrary to the present contentions of the Organization, was under no obligation to afford the claimants a formal investigation.

For the reasons stated the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Maintenance of Way Employes, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Railway have been discussed with the Employes.

OPINION OF BOARD: The issue in this case is whether Claimants were dismissed or whether they voluntarily quit the service. If they quit their jobs, they were no longer employes and the contract they had worked under no longer covered, and of course no investigation was required. See Award 19157 First Division and Award 13054 First Division.

Claimants are five laborers in a Section Crew working for the Florida East Coast Railway Company. After going to work at 7:00 A. M. on September 3, 1959, under their foreman Terry, they picked up some cross-ties at a point a quarter-mile south of Stuart, and then returned (with their motor car and push car) to the tool house about 7:55 A. M. There they were to pick up an additional crosstie and several track jacks and proceed south to work on a highway crossing. All five of the Claimants started to go to pick up the crosstie, when Foreman Terry stopped them and told them that it would not require all of them to load the one tie and for some of them to load the jacks. One of the Claimants stated to the foreman Terry "we are going to quit until we can get a man we can work under with ease." Foreman Terry then asked each laborer separately if they desired to work or quit, and each one of the Claimants stated to the Foreman he was quitting. Each Claimant also told the Assistant Roadmaster and the Roadmaster they were quitting. Each Claimant took their lunch pails and left the place where they were working.

The record clearly shows that the Claimants, all five of them, voluntarily quit. They were no longer employes of the Railroad and had no rights under the Agreement, and no right to an investigation.

There was no violation of the Agreement. On February 12, 1960—Director of Personnel for the Carrier wrote Mr. Goodson, Assistant General Chairman as follows, we quote:

> "As I told you at our meeting, however, in view of your expressed interest in them, I am agreeable to restoring them to the service with their former seniority and vacation rights. but without pay for time lost." This the Claimants refused.

We believe, however, in face of the offer of the Carrier, that Claimants should be restored to service with their former seniority and vacation rights—without pay for time lost, and we so order.

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 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 there is no violation of the Agreement, but in accordance with the findings set out, the five Claimants are to be restored to service with their former seniority and vacation rights.

AWARD

Claim disposed of in accordance with the above opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Chicago, Illinois, this 8th day of March 1960.