

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21390  
Docket Number MW-21627

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees  
(  
(New Orleans Public Belt Railroad

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Track Laborer G. J. Row for alleged 'insubordination' was capricious, arbitrary, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013.7).

(2) Track Laborer G. J. Row be reinstated with seniority, vacation and all other rights unimpaired and he be compensated for all wage loss suffered.

OPINION OF BOARD:

Effective August 6, 1975 the Claimant was dismissed from Carrier's service as a result of his insubordination toward Section Foreman W. J. Pourciau on August 6, 1975. Facts developed at the hearing held on September 3, 1975 evidence that on August 6, 1975, Claimant was working as a Track Laborer in a labor gang under the supervision of Foreman Pourciau. They were engaged in repairing wide gauge in the mill track. While so engaged, Claimant used abusive language toward his supervisor, Section Foreman Pourciau, and also threatened "to whip him". The foregoing state of the record is uncontroverted. Claimant conceded that he had used abusive language toward Pourciau and had indeed threatened him.

It is manifestly clear in this industry that a Carrier need not condone insubordination by an employe toward his supervisor. In the case before us when the Claimant used abusive language toward Section Foreman Pourciau and threatened to whip him, he was obviously guilty of insubordination. And, under normal circumstances, inasmuch as Claimant had only eleven months service with the Carrier when the insubordination occurred his dismissal from service would not be considered arbitrary, capricious or unreasonable.

However, this Board finds from the record before us that Section Foreman Pourciau had initially used abusive language toward the Claimant, which language had provoked Claimant's use of threatening and abusive language toward Pourciau. And although such language may be well accepted in a labor gang such as the one involved herein, this in no way diminishes the effect Pourciau's language had on the Claimant. Claimant was obviously upset by his Foreman's language and thus retorted in kind. Based on the

foregoing state of events, this Board feels compelled to conclude that Claimant's dismissal was not warranted. He certainly should have been disciplined for his insubordination but due to the mitigating circumstances present in the instant case, his dismissal was clearly excessive. His time out of service since August 6, 1975 must be considered a proper suspension for his act of insubordination. Accordingly, Claimant is ordered reinstated with his seniority and other rights unimpaired, but without compensation for wages lost.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.

