

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award Number 22626
Docket Number MW-22352

James F. Scearce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Terminal Railroad Association of St. Louis

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

(1) The suspension of ninety (90) days imposed upon Track
Laborer J. A. Mathewson, IV for alleged insubordination was capricious,
arbitrary, unwarranted and on the basis of unproven charges (System
File TRRA 1976-38).

(2) The charge leveled against the claimant be stricken
from his record and he be compensated for all wage loss suffered."

OPINION OF BOARD: On August 4, 1976, Assistant Track Supervisor
came upon a job site and, upon observing two
track laborers digging an "eye" (a hole under trackage for a tie)
he instructed them to work separately and for each to obtain both
a pick and shovel to do so. A third track laborer - the Claimant
herein - standing nearby, heard the Assistant Track Supervisor's
work direction and approached him stating, essentially, that the
crew had a foreman and that he (the Assistant Track Supervisor) had
no right to come onto a job and give a direct order to a crew member
(the foreman worked for the Assistant Track Supervisor). Apparently,
words were exchanged and the Assistant Track Supervisor took the
grievant out of service for insubordination. As a result of a
hearing, the Claimant was issued a 90-day suspension.

There is little question that the Claimant exceeded both
his rights and good judgment in interposing the objection to the
actions of the Assistant Track Supervisor. Nothing the supervisor
did placed the other two track laborers in jeopardy for their safety.
If the Claimant felt the supervisor had exceeded his authority,
his rights to object were protected by the Agreement - he could have
grieved such actions. He did not, and thus put himself in a position
to draw discipline. We note that the Claimant was without any record

of prior discipline at the time of this incident and we further conclude that both parties may well have let the matter get out of hand. Consequently, we affirm the Carrier's right to discipline but consider its extent in excess of reasonableness. We direct that such disciplinary action be reduced to a 45-day disciplinary suspension.

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 as set out in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1979.

DEC 14 1979