NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22719
Docket Number MW-22569

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 Carrier, without just and sufficient cause, improperly disciplined Track Laborer Steven J. Schaefer on charges that he allegedly failed to protect his 'assignment on numerous occasions account being late' and that he allegedly failed to protect his 'assignment during an emergency and insubordination on Thursday, May 5, 1977' /System File TRRA 1977-26/.

(2) The above charges be stricken from the claimant's record, he be reinstated with seniority and all other rights unimpaired and he be reimbursed for all monetary loss suffered beginning May 6, 1977, all in conformance with Rule 24(d)."

OPINION OF BOARD: The Claimant herein was a Track Laborer with about five years' service at the time of his dismissal. The record shows that over the period of a year's service, the Carrier had permitted the Claimant to leave work at a specific time (4:00 p.m.) in order that he might attend school. On about May 4, 1977 a derailment occurred which apparently required the extended services of the Claimant on May 5, 1977; he was so advised, but even upon a direct order to remain on the job, he left with a comment of not caring if taken out of service as a result. After a hearing, which required rescheduling due to the Claimant's failure to appear, he was removed for failing to protect his assignment and insubordination. The Organization contends his removal is arbitrary, capricious and excessive; it points to a contention that the work involved required less than an hour to complete. In his own defense, the Claimant contends he understood his rights to leave work were not subject to any restrictions.

We offer no solace to the Claimant here. Obviously, with five years' service, he could not be unaware that he owed a basic obligation to meet the requirements of his position. The fact that the Carrier had been willing to accommodate to the Claimant's personal wants was obviously lost upon him, when the need arose to be available under the circumstances which arose on May 5, 1977. His unwillingness to alter his own wants was

translated into an act of insubordination -- refusal of a direct and reasonable order, occasioned by an unusual circumstance. There was no question but that the Claimant had measured the potential dimensions of the results of such a decision. We shall not make right that which was obviously wrong.

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 Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A W Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.