

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22737  
Docket Number MW-22637

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Trackman J. E. Purnell was without just and sufficient cause and wholly disproportionate to the offense with which charged /System File C-4(13)-JEP/12-39(77-14) J2/.

(2) Trackman Purnell shall be restored to service with seniority, vacation and all other rights unimpaired; his record be cleared of the charges; he shall be compensated for all wages lost; all in conformance with Section 3 of Agreement Rule 39."

OPINION OF BOARD: Claimant was a trackman, assigned to Carrier's System Rail Gang 8592. Equipment for the gang consisted of kitchen, dining and sleeping cars. On February 21, 1977, it was decided by those in charge of the gang that breakfast was to be served from 6:15 A.M. until 6:50 A.M., and no one was to be served after that time.

The Carrier contends that instructions were issued to all the men in the gang as to the breakfast serving time. Claimant contends that he did not receive such instructions.

On the morning of February 22, 1977, claimant arrived at the dining car after the food had been removed from the serving line. When he was unable to obtain food he became angry, threw a plate against the wall, shattering same, and also used profanity.

Following a formal investigation, claimant was dismissed from service effective March 11, 1977. The Board has carefully reviewed the transcript of the investigation and the submissions of the parties. There is substantial evidence that claimant engaged in improper conduct. His actions justified severe discipline.

Based on the entire record, the Board is of the considered opinion that the time that claimant has been out of service should constitute sufficient discipline for the offense. We will award that claimant be restored to the service with seniority and other rights unimpaired, but without compensation for time lost while out of service. Claimant should clearly understand, however, that the purpose of this award is to give him "one last chance" to become and remain a responsible employee, and that further major infractions by him will result in the permanent termination of his services.

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 Employees involved in this dispute are respectively Carrier and Employees 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 imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.

