

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22918  
Docket Number MW-22904

George S. Roukis, 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 discipline (reprimand) of Trackman B. L. Madera for alleged violation of 'Rule No. 17' on September 15, 1977 was capricious, arbitrary, unwarranted and on the basis of unproven charges [System File C-4(13)-BLM/12-39(78-1) J2].

(2) Trackman B. L. Madera's record be cleared of the charge, he be compensated for all wage loss suffered and reimbursed for expenses incurred in connection with attending the hearing."

OPINION OF BOARD: Claimant was assigned to Mobile Road Gang 8592 with headquarters in camp cars when the involved incident took place on September 15, 1977.

He was later directed by letter, dated September 21, 1977 to attend an investigation in connection with the altercation and charged with violating Rules 11, 17 and 18 of the Carrier's Safety Rules for Engineering and Maintenance of Way Employes, effective, September 1, 1967.

On October 7, 1977, shortly after Carrier officials evaluated the investigative record, Claimant was notified by letter that he was specifically found guilty of violating Safety Rule 17, for using obscene language while on company property and this disposition was appealed pursuant to Agreement provision. Safety Rule 17, which is referenced in toto hereinafter, provides that: "Profane, indecent or abusive language is prohibited."

In our review of the investigative transcript, particularly the precise pattern of events between 12:30 A.M. and 1:00 A.M. on September 15, 1977, we find that Claimant was disturbed, threatened, and wilfully struck without provocation by Trackman Washington and that his use of the word "hell" under these disquieting and unexpected conditions was not inflammatory or a further conflict precipitant.

The utterance of this word under these circumstances and considering the insult and provocation which he suffered certainly cannot be construed

as belligerent. His overall demeanor was not abusive, combative or insubordinate when measured against Trackman Washington's aggressive deportment and his only fault that night was being in the wrong place at the wrong time. We do not find, upon the record, that the spirit or intent of Safety Rule 17 was violated and as such we must sustain the claim.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of July 1980.

