

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22933  
Docket Number MW-23088

Paul C. Carter, Referee

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

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

(1) The Thirty (30) day suspension imposed upon and subsequent dismissal of Trackman A. Black was without just and sufficient cause and wholly disproportionate to the offense with which charged /System Files C-4(13)-AB/12-39 (78-17) J and C-4(13)-AB/12-39 (78-21) J/.

(2) Trackman A. Black shall be returned to service with seniority and all other rights unimpaired, be compensated for all wage loss suffered and his personal record be cleared of the charges leveled against him."

OPINION OF BOARD: This case involves two issues: (1) a thirty-day suspension of claimant, and (2) dismissal of claimant.

[At the beginning we are confronted with the contention of the Carrier that as the cases were handled separately on the property, they should be handled separately before the Board. There is no proper basis for complaint in this respect. The combining of the claims for presentation to the Board did not expand or alter the claims. The Carrier has in no manner been misled. The Carrier's contention in this respect is denied, and the claims will be handled on their merits. See recent Awards 22612, 22409 and 22499.]

As to the thirty-day suspension, the record shows that an investigation was conducted on February 1, 1978, in the office of Roadmaster, Jacksonville, Florida, on the charge:

".....it appears you obtained permission January 9, 1978 to be off under false pretense, and for this absence through January 16, 1978, you are charged with violation of Bulletin No. 1, dated September 29, 1976, and Rule 17(b) quoted therein, of the Agreement between this Railroad and its employees, and with violation of those parts of Rule 18, dealing with dishonesty and making false statements, of the current Safety Rules for Engineering and Maintenance of Way Employees."

Bulletin Notice No. 1, dated September 29, 1976, copy of which had been furnished to claimant, reads:

"The need for the position on each and every job on which you are assigned has been carefully considered and has been authorized based on each employee fulfilling his assignment daily. Absenteeism is disruptive to the orderly manner of completing daily tasks and will not be tolerated. Your attention is called to Rule 17(b) of the Agreement between the Railroad and its Maintenance of Way Employees, which is quoted below:

'An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he must be able to furnish proof of his inability to notify his foreman or proper officer.'

"It is your responsibility to obtain permission from your supervisor or other proper officer of the Company prior to any absence from a daily assignment. Such permission will only be granted where a valid reason exists and this authorization will be given to you in writing. In any case where permission to be absent from your daily assignment is not obtained in writing, you must furnish your foreman proof in writing of the reasons for such absenteeism on the morning of your return to duty. Such notice to the foreman must contain proof of your inability to properly notify him or other proper officer of the Company as well as the necessity for such absence, such as a statement from your doctor in case of sickness. Any failure on your part in reporting to duty each and every work day, unless permission is obtained from your foreman to be absent, will subject you to disciplinary action."

There was substantial evidence adduced at the investigation to support the charge against the claimant, and the Board finds that the thirty-day suspension was not arbitrary, capricious or in bad faith.

On February 21, 1978, the Roadmaster again wrote the claimant:

"In our post hearing investigation into statements made by you during hearing held on February 1, 1978, relating to your being absent without permission and being dishonest by making false statements, many discrepancies have been developed. While these discrepancies (were) in your direct testimony during this hearing,

"you are hereby charged with making false statements regarding matters under investigation and violation of the appropriate portion of General Rule 18.

"It has been further reported to me and discussed with you that on Tuesday, February 14, 1978, you did threaten your Foreman, Mr. J. E. Jones, with bodily harm. For this, you are hereby charged with violating those parts of General Rule 18 relating to vicious or uncivil conduct.

"General Rule 18 referred to above is contained in the current Safety Rules of Engineering and Maintenance of Way Employees. A hearing will be scheduled by the Division Engineer and you will be advised accordingly."

General Rule 18, referred to in the Roadmaster's letter of February 21, 1978, reads:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

Following the investigation, that was conducted on March 7, 1978, claimant was notified of his dismissal from service on March 22, 1978.

The Board has carefully reviewed the transcript of the investigation conducted on March 7, 1978, and finds substantial evidence in support of the charge that claimant made false statements during the hearing conducted on February 1, 1978, in violation of General Rule 18. There was also substantial evidence in support of the charge that on February 14, 1978, claimant threatened his foreman with bodily harm. The claimant was guilty of conduct that simply cannot be condoned. The Carrier's action in dismissing him from the service was not arbitrary, capricious or unreasonable.

The claim will be denied in its entirety.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.

