

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23115
Docket Number MW-23284

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(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 Trackman T. L. Hannah on charges that

(a) he was allegedly insubordinate on November 3, 1978 (System File TRRA 1978-45);

(b) he was allegedly insubordinate on April 11, 1979 (System File TRRA 1979-30).

(2) Trackman T. L. Hannah be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered including overtime pay."

OPINION OF BOARD: Claimant was employed as a track laborer in Carrier's District Gang No. 2, under the jurisdiction of Track Foreman John Davis and Track Supervisor D. S. Stogner.

The Carrier contends that the claims as submitted to the Board by the Organization were handled on the property as two separate claims, were improperly combined in the submission to the Board, and, therefore, should be dismissed. The Board finds no proper basis for the complaint of the Carrier in this respect. The combining of the claims by the Organization in one submission did not expand or alter the claims, nor was the Carrier misled. See Awards 22480, 22499, 22611 and 22612.

On November 3, 1978, the gang was engaged in repairing track at the south end of C.D. Yard, which had been damaged by a derailment. During the afternoon Supervisor Stogner went to the work site and instructed the foreman to keep the gang at the location until the repairs were made. The Carrier contends that as a result of the Supervisor's instructions, which may have required the gang to work overtime, claimant informed the Supervisor that he would not work overtime, left the job site and later used vulgar and profane language to the Supervisor.

On November 7, 1978, claimant was notified by the Assistant Chief Engineer:

"You were removed from service about 1:30 P.M., Friday, November 3, 1978, pending the outcome of a hearing that will be held at 9:00 A.M., Friday, November 10, 1978, in the Conference Room in building located at #137 East Bremen Ave., St. Louis, Missouri to determine the facts and your responsibility, if any, in connection with your being insubordinate to your Track Supervisor, Don Stogner, Sr., at approximately 1:30 P.M., Friday, November 3, 1978 while working as Track Laborer.

"Arrange to be present. You are entitled to representation and witnesses in accordance with Rule #24 of the current Agreement between Terminal Railroad and the Brotherhood of Maintenance of Way Employees."

By agreement the hearing was postponed and conducted on November 16, 1978. On November 29, 1978, claimant was advised that he was disciplined sixty (60) days without pay, the suspension beginning on November 3, 1978.

On April 12, 1979, claimant was notified by the Assistant Chief Engineer:

"You were suspended from service on or about 7:30 A.M., Wednesday, April 11, 1979 pending the outcome of a formal investigation (hearing) that will be held at 1:30 P.M., Wednesday, April 18, 1979 in the Conference Room located in building at #137 East Bremen Avenue, St. Louis, Missouri to determine the facts and your responsibility, if any, in connection with your being insubordinate to your Track Supervisor, Donald S. Stogner, on or about 7:30 A.M., Wednesday, April 11, 1979, while working as a Track Laborer in C. D. Yard.

"Arrange to be present. You are entitled to representation and witnesses in accordance with Rule #24 of the current agreement between the Terminal Railroad and the Brotherhood of Maintenance of Way Employees."

The hearing was held as scheduled and on April 26, 1979, claimant was notified of his dismissal from the service.

Transcripts of the hearings conducted on each charge have been made a part of the record. A review of the transcripts shows that none of claimant's substantive procedural rights was violated. There was substantial evidence in support of the charge in each case. There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.