

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23285
Docket Number MW-23369

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 dismissal of Trackman R. E. Hodges for alleged insubordination and vicious and uncivil conduct was without just and sufficient cause and wholly disproportionate to such an offense (System File 37-SCL-77-68).

(2) Trackman R. E. Hodges shall be returned to service with seniority and all other rights unimpaired and shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed by the Carrier as a trackman, with about six years of service. At the time of the occurrence giving rise to the dispute herein he was assigned to Extra Gang No. 9206. On the morning of November 21, 1978, while the Foreman was in the depot, the gang was left in charge of the Assistant Foreman. A controversy arose between the claimant and the Assistant Foreman about getting water. Claimant was held out of service, pending an investigation on the charge:

"...with violation of the following Rules for Engineering and Maintenance of Way Employees:

Rule 17; which reads as follows:

'Profane, indecent or abusive language is prohibited.'

That portion of Rule 18; which reads as follows:

'Vicious or uncivil conduct or insubordination will subject the offender to dismissal.' "

The investigation was conducted on November 29, 1978, as scheduled. Claimant was present throughout the investigation and was represented by the General Chairman of the Organization. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that the investigation was conducted in a fair and impartial manner. None of claimant's substantive procedural rights was violated.

There was substantial evidence in the investigation that claimant used vile and profane language to the Assistant Foreman, and actually threatened him. His dismissal from service on December 12, 1978, was justified. There is no proper basis for the Board to interfere with the discipline imposed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 15th day of May 1981.

