

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23429

Docket Number MW-23479

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri Pacific Railroad Company

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

(1) The dismissal of Trackman R. L. Benton for alleged insubordination was without just and sufficient cause and was wholly disproportionate to the charge leveled against him (Carrier's File S 310-280).

(2) Trackman R. L. Benton shall be reinstated with seniority, pass and vacation rights unimpaired and shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant R. L. Benton was employed as a Trackman by the Carrier with a seniority date of January 20, 1978. On February 1, 1979, Claimant was working a position as Trackman on Gang 5492 near Hume, Texas, when he refused to comply with instructions from his supervisors to operate a air hammer to drive spikes.

Charges were filed against Claimant and he was ordered to appear for formal investigation on February 5, 1979. The investigation was held as scheduled, a copy of the transcript of the investigation was made a part of the record.

A careful study of the entire record, including the transcript, reveals that Claimant refused to obey instructions from three supervisors. About 4:00 p.m. on February 1, 1979, the Assistant Foreman instructed Claimant to operate the air hammer to drive spikes. Claimant refused explaining that he had operated the air hammer the previous day but had bent spikes and for this reason refused to follow his supervisor's instructions. The Assistant Foreman reported the incident to the Foreman, who personally instructed Claimant three times to operate the air hammer and also offered to instruct him in its operation. Claimant still refused. The Foreman reported this to his supervisor, the Roadmaster, who came to the Gang and he offered to show Claimant how to operate the machine three times but Claimant adamantly refused. At this point he was removed from service pending investigation.

A review of the transcript of the investigation reveals Claimant was represented by his General Chairman and they were given the opportunity to provide witnesses to support their position but declined. They were given every opportunity to examine and cross examine Carrier's witnesses. It is evident Claimant was given a fair and impartial hearing.

The Board finds and concludes Claimant failed to obey reasonable instruction clearly issued in line with his assigned duties and he adamantly refused to accept help offered by his supervisors to assist him in the operation of the air hammer. This was clearly an act of insubordination on the part of Claimant, therefore, the claim must be denied.

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

A. W. Paulsen

ATTEST:

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

