

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23993
Docket Number MW-23855

Josef P. Sirefman, 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 Eric Merriweather was excessive and wholly disproportionate to the offense with which charged (System File S 310-285).

(2) Trackman Eric Merriweather shall be allowed the remedy prescribed in Agreement Rule 12 1(e)."

OPINION OF BOARD: Claimant Eric Merriweather, a Trackman, received a Notice of Investigation in connection with his alleged failure to comply with the instructions of a General, and an Assistant Foreman, and "for using profane language on January 29, 1979..." An investigation was held on March 7, 1979 and Claimant was dismissed from service on March 9, 1979.

A review of the record before this Board establishes that Claimant received a fair and impartial hearing, and further establishes that on January 29, 1979 he refused to perform his work assignment despite directions from his supervisors, used abusive language, and made threats of physically harming a Foreman. There was substantial evidence to sustain the Carrier's decision to discipline Claimant for these serious infractions. Given Claimant's five months in service and the severity and sustained nature of the infractions on that day, the penalty of dismissal is reasonable.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of September 1982.

