

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23994  
Docket Number MW-23858

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Georgia Railroad

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

(1) The dismissal of Trackman Michael S. Payne for alleged insubordination was without just and sufficient cause and wholly disproportionate to such an offense (System File 37-AWP-79-93).

(2) Trackman Michael S. Payne shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant Michael S. Payne, a Trackman, was suspended from service on September 5, 1979 pending a hearing on a charge of insubordination. The hearing was held on September 14, 1979, and on September 31, 1979 Claimant was informed of his dismissal from the Carrier's service.

A review of the record before this Board establishes that Claimant received a fair and impartial hearing, and further establishes that on September 5, 1979 Claimant was steadfastly insubordinate in refusing a direction from his foreman to carry a Stop Board about one-quarter of a mile and to set it up. There is nothing in the record, other than Claimant's mere assertion, that the assignment was hazardous or a threat to his physical safety. There was substantial evidence to sustain the Carrier's decision to discipline Claimant. Given his prior record of a Letter of Caution and a ten day suspension during a relatively short period of service, and the September 5th incident which directly challenged his Foreman's authority, the penalty of termination was 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 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: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Secretary

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

