

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24221
Docket Number MW-24363

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(New Orleans Public Belt Railroad

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

(1) The discipline imposed upon Trackman George J. Row for alleged 'Insubordination, Disrupting the Gang, and being quarrelsome with Relief Foreman Lennah Turner' was without just and sufficient cause, unwarranted and on the basis of unproven charges (Carrier's File 013.7).

(2) The claimant shall now be afforded the remedy prescribed in Agreement Rule 16(f)."

OPINION OF BOARD: George J. Row, the Claimant, is a trackman with seven years of service with the Carrier. He was discharged effective September 2, 1980, for insubordination, disrupting the gang and being quarrelsome with the relief foreman in an incident which occurred on August 29, 1980. The Organization appealed the discharge, and as a result of a meeting held on January 13, 1981, it was agreed to reinstate Trackman Row to his former position without pay for the time off. This matter is before the Board based upon the Organization claim the discipline imposed was without just and sufficient cause, unwarranted, and unproven.

The incident in question involved a roving, extra gang to which the Claimant was assigned loading ties into a dump truck. There is no question he and a relief foreman had words. Notwithstanding, the essence of the dispute involves conflicting stories concerning what actually took place. The relief foreman stated he had trouble with the Claimant who was talking to the other men and being generally disruptive. Claimant was told to do his work, and the matter escalated until Claimant challenged the relief foreman to settle their differences in the street. Despite the conflicting testimony, the Board is satisfied the record contains sufficient evidence to justify disciplining Claimant. Claimant did not deny an incident took place and admitted the relief foreman told him to stop talking and go back to work. Recognizing the credibility issues involved, the Board has scrutinized this record and finds no basis to dispute the Carrier's finding of fact. Furthermore, considering Claimant's poor work record, the Carrier's assessment of discipline was a proper exercise of managerial judgment.

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 Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.

