

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24571
Docket Number MW-24714

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Baltimore and Ohio Railroad Company

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

(1) The dismissal of Trackman J. A. Pugh for alleged "conduct unbecoming an employee, insubordination to officials of the Railroad, and having an altercation with officials of the Railroad Company on Monday, August 11, 1980" was without just and sufficient cause (System File 2-MG-2992/ERRG-1715).

(2) Claimant J. A. Pugh shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered and for all other Agreement benefits including Health, Welfare and Dental Insurance coverage.

OPINION OF BOARD: The Claimant was employed by the Carrier as a trackman in Carrier's rail gang working in the area of Fairfield, Pennsylvania. He had been in Carrier's service about ten months. On August 23, 1980, he was charged:

"Arrange to attend a hearing on September 2, 1980, at 9:30 a.m. in the Offices of the Manager of Engineering, located in Room 300, Camden Street Warehouse, Camden and Eutaw Streets, Baltimore, Maryland.

You are charged with responsibility in conduct unbecoming an employee, insubordination to officials of the Railroad, and having an altercation with officials of the Railroad Company on Monday, August 11, 1980, in the vicinity of Fairfield, Pennsylvania. The investigation is to determine your responsibility, if any, of conduct unbecoming an employee and being insubordinate by refusing to perform your duties as instructed by your supervisor on the morning of August 11, 1980. You were again insubordinate to Supervisor Van Kirk at about 4:15 p.m. by refusing to leave the Camp Cars which were on company property as instructed by your supervisor. You then are charged with responsibility of provoking and having an altercation a short time after the episode in the Camp Cars off company property with Supervisor Van Kirk and Lt. Maloney of the Railroad Police Department.

Arrange for your representatives and/or witnesses to be present if desired."

The investigation was postponed and conducted on September 25, 1980. At the investigation, a transcript of which has been made a part of the record, it was developed that on August 11, 1980, the Claimant approached the Supervisor and requested that he be promoted to foreman. After questioning him as to his qualifications, the Supervisor determined that Claimant did not have the requisite qualifications to handle a foreman position, and he so informed the Claimant. Claimant was then instructed to perform work as directed by the Assistant Supervisor, but refused to do so, stating that he was going to follow the Supervisor around all day to learn how to become a foreman. Upon Claimant's refusal to perform work as directed, he was removed from the service by the Supervisor, who returned him to the Camp Cars, and instructed him to get off the Company property. The Supervisor later returned to the camp cars and found that Claimant had not left, at which time the Supervisor instructed him to be off the camp cars by quitting time. An argument ensued, with the Claimant using loud and profane language to the Supervisor, and making vile, profane and indecent exposure and gestures to the Supervisor.

At the end of the work day, the Supervisor returned to the camp cars, with two members of Carrier's Police Department, and found that Claimant had refused to leave Company property as instructed. At that time Claimant wanted a written statement verifying that he had been taken out of service. When the statement was offered by the Supervisor, he refused to accept it. He was instructed a second time to leave Company property, and again responded with belligerent remarks to the Supervisor, and again engaged in vile, profane and indecent exposures and gestures to the Supervisor.

The Supervisor and the representatives of the Carrier's Police Department then concluded to contact the Pennsylvania State Police for assistance. They left the scene of the camp cars and drove about a mile to a church parking lot, to await arrival of the State Police. A short time later, the Claimant and two other trackmen arrived at the church parking lot location, approached the Supervisor and one of the Police Department employees and Claimant entered into an altercation with the Supervisor, the evidence clearly indicating that the Claimant was the aggressor. During Claimant's physical attack on the Supervisor, the State Police arrived, handcuffed Claimant and arrested him.

The transcript of the investigation is replete with evidence in support of the charges against the Claimant. The investigation, or hearing, was conducted in a fair and impartial manner. Claimant was guilty of conduct that cannot be condoned.

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 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

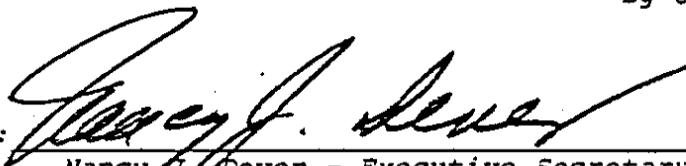
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1983.