

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24910
Docket Number MW-25024

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard System Railroad

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

(1) The dismissal of Trackman E. Fluellen for violation of "Rules 11, 17 and part of 18" was excessive and disproportionate to the offense with which charged [System File 37-SCL-81-30/12-39(82-1001) K3].

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was employed as a trackman. On September 16, 1981, he was working on Extra Gang No. 5373, which gang was engaged in transporting rail between Woodland and Talbottom, Georgia.

Claimant engaged in a vulgar, crude, and obscene conversation about the private life of another employe in the gang, resulting in rock throwing between the two employes, and Claimant finally receiving a knife wound in the back. The Carrier describes the cut as "fifteen inches long, one inch deep, and three inches wide." Claimant was assisted to his feet by the foreman, taken to a doctor and then to a hospital.

Following an investigation conducted on September 30, 1981, a transcript of which has been made a part of the record, Claimant was dismissed from service effective September 16, 1981, the date of the occurrence.

Carrier's Rules 11, 17 and 18 of the Safety Rules for Engineering and Maintenance of Way Employes read:

- "11. Scuffling, horseplay, practical jokes and all conduct of a similar nature either on or off duty, while on Company property, are prohibited."
- "17. Profane, indecent or abusive language is prohibited."
- "18. Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

Without detailing the language used by the Claimant, suffice it to say that it was such that simply cannot be condoned in any work force. There is no proper basis for the Board to interfere with the discipline imposed.

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

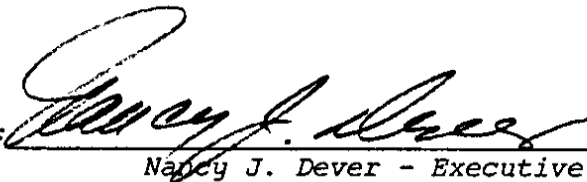
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.