

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 37
Docket No. 49

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The dismissal of Machine Operator E. Randolph, Jr. for alleged insubordination toward his foreman on May 8, 1984 was without just and sufficient cause. (Organization File 2D-4578; Carrier File 81-84-184-D).
- (2) Machine Operator E. Randolph, Jr. shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

On May 8, 1984, claimant was assigned as a machine operator on tie gang working at Polo, Missouri, under the supervision of Foreman G. D. Bryant, when a controversy developed between claimant and Foreman Bryant concerning the spiker that claimant was to use, resulting in claimant being removed from service pending formal investigation. Claimant was subsequently directed to attend a formal investigation on May 15, 1984, on the charge:

"Your responsibility in connection with being insubordinate to Foreman G. D. Bryant of the Tie Gang Number 2106 on May 8, 1984 at Polo, Missouri."

A copy of the transcript of the investigation has been made a part of the record. Foreman Bryant testified that about 7:30 A.M. on May 8, 1984, he instructed claimant to operate a Zaper Spiker instead of the Nordberg Spiker and claimant responded that no he would not, that he repeated his instructions to claimant, but claimant refused to comply; that he called the Project Engineer, Mr. J. E. Biggerstaff; that when Mr. Biggerstaff arrived on the scene and claimant was asked to repeat to Mr. Biggerstaff what he had said to the foreman, claimant addressed the foreman in a foul and vulgar manner and invited him to step

off the property, stating "we can settle this out right here and now, just step off the property and take your hard hat off."

Mr. Biggerstaff testified that he heard claimant use profane language toward the foreman and heard claimant ask the foreman to step off the property.

A mechanic testified that he heard claimant tell the foreman that he would not work with the Zaper Spiker, and that the foreman addressed the claimant in a normal voice.

Claimant contended in the investigation that what the other witnesses testified to were lies, and denied telling the foreman that he would not run the other machine (the Zaper Spiker.)

Rule 10 of Carrier's General Regulations and Safety Rules reads:

"Courteous, orderly conduct is required of all employees. Boisterous, profane or vulgar language is prohibited."

There was substantial evidence in the investigation that claimant was in violation of Rule 10, and also that he was insubordinate to his foreman. The record also shows that this was the third time that claimant has been disciplined for insubordination. His actions in the present case, coupled with his prior record, fully warranted dismissal.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. B. Thompson
Labor Member

Dated: April 16, 1985.