



**Award No. 5861**

**Docket No. 5749**

**2-MP-CM- '70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO  
(Carmen)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That Carman J. W. Stoffel and Carman L. A. Dougherty were unjustly given thirty (30) days' suspension from the service of the Missouri Pacific Railroad Company, Dupu, Illinois, and both employees were held out of service on November 26, 1967, and the remainder of the suspensions was from January 18, 1968 until February 16, 1968, on Carman Stoffel and Carman Dougherty returned to work on Wednesday, February 14, 1968—this was due to difference in rest days of these employees. Also, Carman J. W. Stoffel's birthday occurred Wednesday, February 7, 1968, and he was deprived of birthday holiday pay in the amount of eight hours (8') at the straight time rate due to this improper suspension.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. W. Stoffel and L. A. Dougherty for all time lost due to their improper suspension from service, and also that Carman Stoffel be paid for his birthday holiday which occurred Wednesday, February 7, 1968.

**EMPLOYEES' STATEMENT OF FACTS:** The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a large transportation yard and heavy repair rip track and what is known as a small or running rip track at Dupu, Illinois.

The location which lead up to this incident was the killing of one man and the shooting of another at Valley Junction, Illinois, a point seven (7) miles from Dupu, Illinois.

Car Inspectors J. W. Stoffel and L. A. Dougherty, hereinafter referred to as the claimants, were both employed in Yard A&F or South Yard at Dupu, Illinois.

At Valley Junction interchange is made with the Illinois Central Railroad, and at this interchange point a switch crew takes cars to Dupu, Illinois where the South bound trains were made up and then given interchange

lenient. Your board has refused to set aside the carrier's action unless it was found that the action was arbitrary, capricious, excessive or an abuse of managerial discretion. The employees have offered no proof that the suspension of the claimants for 30 days was excessive and the claim should be denied.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants were each suspended for 30 days for refusing to comply with instructions.

Claimants were regularly assigned carmen on an 11:00 P.M. to 7:00 A.M. shift. The record indicates that on the night in question, Claimants were instructed by their foreman to accompany him to inspect cars at Valley Junction. Because an unknown and unapprehended sniper shot an operator at Valley Junction the previous night, Claimants refused to go to Valley Junction unless they were given armed protection. In refusing Claimant's request for protection, Claimants testified that the foreman stated: "Missouri Pacific Railroad doesn't have to furnish you no (sic) protection."

Carrier's position, in the handling on the property, was summarized in a letter to the General Chairman from the Director of Labor Relations as follows:

"These claimants stand admittedly guilty of insubordination, the gravity of which generally warrants discipline as severe as outright discharge from the service. While they offered the excuse of fear of an unknown assailant, such an excuse does not justify a refusal to comply with instructions in the absence of visible present danger to loss of life or limb or great bodily injury. The evidence offered by the claimants fell far short of sufficient proof of the hazards of which they contend they were fearful." (Emphasis added.)

Thus, the Carrier takes the position that unless there is a "visible present danger to loss of life or limb or great bodily injury" any refusal to comply with instructions is tantamount to insubordination.

The Board cannot agree with this standard. There are many instances and situations, such as an unknown and unapprehended assailant who shot a trainman in the area the night before, which could cause such apprehension and fear in the mind of an employee as to justify either a refusal to go into the area or to demand armed protection. The subjective impulse on the part of the employee must, of course, be weighed with the objective circumstances of the situation as it existed at the time of refusal.

An analysis of the record in this dispute, including the testimony at the hearing, shows that the Claimants were justified in their actions the night

after a shooting in the same proximate area of work while the assailant was still at large.)

**A W A R D**

The Claim is sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1970.