

**Award No. 6313
Docket No. 6190
2-N&W-CM-'72**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Joseph E. Cole when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current working agreement upgraded Carman Kenneth Curtis was discriminated against when he was held out of service prior to the investigation, and, subsequently was unjustly suspended from the service of the Carrier from December 31, 1969 to January 29, 1970, both dates inclusive, at Bellevue Yards, Bellevue, Ohio.

(2) That accordingly the Carrier be ordered to compensate upgraded Carman Kenneth Curtis in full the thirty (30) days he was held out of service and all other benefits he would have enjoyed if he had not been suspended.

EMPLOYEES' STATEMENT OF FACTS: Upgraded Carman Kenneth Curtis, hereinafter referred to as the Claimant, was regularly employed by the Norfolk and Western Railway Company, hereinafter referred to as the Carrier, as a Car Repairer at Bellevue Yards, Bellevue, Ohio. He was first employed on Roster 6/10/67.

On December 29, 1969 the Claimant was notified by letter to appear for investigation on December 31, 1969. The Carrier had charged Claimant with allegedly,

"* * * refusing to accept a direct order and insubordination at approximately 2:45 P.M. on Wednesday, December 29, 1969."

The Claimant received a letter from General Car Foreman, B. L. Booth, dated January 27, 1970, notifying him that,

"As a result of the formal investigation held in my Office December 31, 1969, you are hereby assessed a thirty (30) day actual suspension in lieu of dismissal."

supported by testimony given at the investigation and the discipline assessed was commensurate with the act committed.

The Carrier respectfully requests that your Board so find and deny the claim in its entirety.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

It is inherent in the employer-employee relationships that the Carrier may hold a person out of service pending the investigation, and that does not violate Rule 33, third paragraph, which says that there shall be no suspension of work by the employer, or a shutdown by the employee. However, if the holding of the employee out of service is wrong, then the carrier must make the employee whole.

A careful review of this file shows that the Senior Foreman issued a written order and a Junior Foreman attempted to alter that written order with an oral order that did not have the same dignity, nor did it have the same responsibility as the written order.

The conflict in Management orders is the crux of this difficulty and grievance.

Mr. Booth, the Senior Foreman, was the presiding officer at the hearing, was a witness, questioned witnesses, and issued the order of suspension. Mr. Booth was the person who issued the written order, regarding the condition of the vehicle in question.

The written order was unambiguous and stated that the vehicle in question was not to be used. Except in cases of extreme emergency, oral orders by a subordinate should not supersede the orders that were written by the senior officer, if those orders are not ambiguous.

Rules 32 and 33 were scrupulously complied with except that the presence of the principals in this matter in the presence of Mr. Booth, made the whole proceedings suspect.

I find that the Claimant was not insubordinate, but was in reality, obeying the orders that he should have obeyed.

Mr. Booth, or any other management employee, who is going to make a decision, should disqualify himself from such a hearing, if he is going to have to issue the order of decision, as in this case. He may, of course, appear as a witness.

By way of explantation, I do not consider the real condition of the vehicle important to this matter. The Senior Foreman considered it in a condition that it should not have been used.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 2nd day of June 1972.