

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11628
Docket No. 11546
89-2-88-2-14

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen - Division Transportation
(Communications International Union

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (formerly the Baltimore and Ohio
Railroad Company)

STATEMENT OF CLAIM:

1. That the Baltimore & Ohio Railroad Company unjustly and unfairly administered thirty (30) days calendar suspension and entered same on Claimant's personnel record for alleged insubordination to Assistant Car Foreman John Rose during an initial terminal air brake testing of Train 294 on Track 10 Eastbound Class at approximately 4:30 a.m., May 11, 1986.

2. That accordingly, Carman Gordon C. Duncan, herein referred to as Claimant, have any notation regarding thirty (30) days suspension removed from his service record arising out of discipline rendered account the alleged insubordination.

3. That also accordingly, Carman Duncan be made whole again for pay for time lost account administered discipline of thirty (30) calendar days actual suspension as a result.

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 employees 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.

Prior to the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a Carman at Willard, Ohio. On May 22, 1986, the Carrier's General Car Foreman charged Claimant with:

"...conduct unbecoming an employee in that you were insubordinate to assistant car foreman John Rose when you failed to comply with his instructions

while conducting initial terminal air brake test on train 294 on track #10 east bound class at approximately 4:30 AM on May 11, 1986."

The investigation was scheduled for 9:00 A.M., May 28, 1986, but was postponed to 9:00 A.M., June 18, 1986. A copy of the transcript of the investigation conducted on June 18, 1986, has been made a part of the record. Claimant was present throughout the investigation and was represented. We find that Claimant was not denied a fair hearing.

The transcript of the investigation contains substantial evidence that Claimant did not timely comply with the instructions of the Assistant Car Foreman at approximately 4:30 A.M., May 11, 1986. On August 22, 1986, Claimant was notified by Carrier's General Locomotive Foreman:

"In reference to the investigation held on June 18, 1986 in the office of the General Car Foreman at Willard, Ohio.

It has been found that you were guilty when you refused duty the night of May 11, 1986 when you failed to comply with the foreman's instruction.

When you are released from the doctor to return to duty you will begin (30) thirty days actual suspension. At that time you will receive a letter stating the date you will be allowed to return.

Please acknowledge receipt of this letter where designated."

On October 3, 1986, the Claimant was notified that the thirty days actual suspension would commence on October 3, 1986, and run through and including November 1, 1986.

The Board has held that no employee may properly decide for himself the instructions that he will comply with and those that he will ignore. An employee is obligated to comply with instructions and later handle through the grievance procedure if he considers that the instructions were improper. The rule is firmly established: Comply and then complain.

In the handling of the dispute on the property the Organization contended that Claimant was attempting to perform his duties in accordance with Federal regulations, and that the instructions of the Assistant Car Foreman were not in accordance with such regulations. This Board is not empowered to interpret or enforce State or Federal regulations. Our authority is limited to interpreting or applying agreements between Carriers and their employees. (Second Division Awards 7434, 6462; Third Division Awards 24348, 20368, 19790.)

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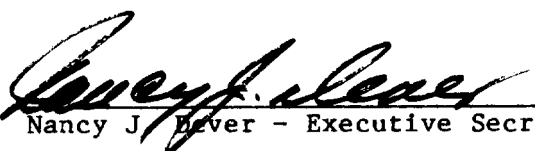
There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Hever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1989.