

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11915
Docket No. 11833
90-2-89-2-137

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

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the current controlling agreement when they improperly suspended Sheet Metal Worker C. E. Brown for thirty (30) days, commencing June 23, 1988, as a result of an investigation conducted on May 24, 1988 at the Northtown Diesel Shop.

2. That accordingly, the Carrier be required to compensate Mr. Brown for all time lost in addition to an amount of 6% per annum compounded annually; remove impairment of his seniority, if any; make Mr. Brown whole for all vacation rights; reimburse Mr. Brown and/or his dependents for all medical and dental expenses incurred while Mr. Brown was improperly held out of service; pay Mr. Brown's estate whatever benefits he has accrued with regard to life insurance for all time he was improperly held out of service; pay Mr. Brown for all contractual holidays; pay Mr. Brown for all jury and all other contractual benefits to which he is entitled.

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 employes 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.

Claimant was employed as a Sheet Metal Worker at the Northtown Diesel Shop. On April 29, 1988, Claimant was a member of a "hook-up" crew which also included a Machinist and an Electrician. The crew's hours were 7:00 A.M. to 3:00 P.M. The crew's responsibility was to make necessary hook-ups and tests between locomotives which were being put together so as to complete a "consist" of engines to pull a train.

At 2:43 P.M. on April 29 a hostler notified a Foreman that the power for Train 107 was ready for hook up. Between 2:30 P.M. and 2:45 P.M. the hook-up crew entered the pit office and were asked by the Foreman if they had hooked up the power for Train 107. One of the crew members said they had not as the consist was not in the hook-up area. The Foreman told the crew the consist was in the hook-up area and that he wanted it hooked up before they left for the day. At this time the Foreman finished his paper work. Shortly thereafter, at 2:48 P.M. while leaving the building the Foreman spotted the Sheet Metal Worker and the Machinist walking toward the diesel shop and not toward the storage area where Train 107 was located. The Foreman caught up with the Machinist and the Sheet Metal Worker and told them to report to the Assistant General Foreman's office in order to determine why they were not complying with his instructions to hook up the power for Train 107. Upon reaching the office the Foreman informed the Assistant General Foreman that the crew had failed to comply with his instructions. Following this statement the Machinist and the Electrician left the office and proceeded to the hook-up area where they performed the necessary hook-up work on Train 107. The Claimant did not go to the hook-up area and did not assist in the hook-up work.

In a notice dated May 5, 1988, the Claimant was notified to attend an Investigation:

"for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged insubordinate behavior and failure to comply with instructions from proper authority resulting in delays to BN trains 107 and 838 at approximately 2:45 p.m. on Friday, April 29, 1988."

Following the Investigation Claimant was found guilty of the charges and suspended for thirty days. The Employees have made many arguments in this case, i.e., pre-Investigation discussions by Carrier officers were prejudicial to the Claimant, notice of Investigation was not proper, Investigation was not fair and impartial and Claimant was not guilty and that in any event the discipline was excessive.

It is true there were discussions prior to the Investigation, however, such discussions are normal and are necessary to determine if an Investigation is warranted. Many times such discussions bring out the fact that there is no basis for holding an Investigation. We cannot find where the pre-Investigation discussions in this case were in any way prejudicial to the Claimant.

We can find nothing improper with the Investigation notice. There is no indication, as alleged by the Employees, that the language indicated a pre-judgment of guilt.

From our review of the Investigation we find it was conducted in a fair and impartial manner. The Claimant was given every opportunity to question all witnesses, asking a total of 880 questions.

We have thoroughly sifted through the voluminous testimony (235 pages) in this case and cannot find any conclusive evidence that would indicate that the Claimant was responsible for any delay to Train 107 or Train 838. It appears other factors caused the delays.

In connection with the charge of insubordination, however, we find the Claimant to be guilty. From testimony given at the Investigation it is clearly evident to this Board that the Claimant knew that the Foreman wanted his crew to hook up Train 107. After a discussion with the Foreman at about 2:45 P.M., Claimant subsequently, in company with the Machinist, started walking toward the diesel shop rather than the storage area where Train 107 was located. At the Assistant General Foreman's office Claimant continued to refuse to hook-up Train 107 and continued discussions with the Foreman even after the other two members of the crew indicated they were leaving to hook up Train 107. Claimant's story that after the Machinist and the Electrician had left for Train 107 the Foreman gave him approval to leave may be true, however, the Foreman had little choice at this point given the fact the Claimant by his actions and talk had made it very evident he had no intention of going out and help his crew hook up Train 107.

As indicated above we found the Claimant to be not guilty of delaying Train 107 and Train 838. We are, however, unable to determine what portion of the discipline was assessed by the Carrier because of having been found guilty of delaying the trains. Because of this lack of knowledge we are reducing the discipline by 50%, i.e., to 15 days suspension.

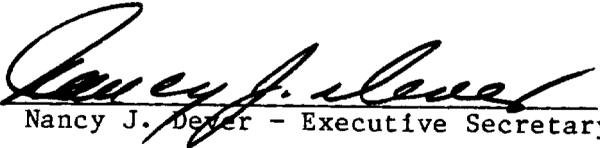
We are aware that the Machinist received only 5 days suspension. However, we believe Carrier, when determining the amount of discipline to be assessed in this case, properly took into consideration the fact that the Machinist eventually did hook up Train 107, whereas the Claimant did not. We believe the Claimant had no intention (beginning at 2:30 P.M.) to hook up Train 107 and this is borne out by his subsequent actions of being insubordinate until he left the property shortly after 3:00 P.M. When the actions of the two employees are compared we do not consider it to be discriminatory for the Claimant to receive more discipline than the Machinist. Insubordination is a very serious matter and is not taken lightly by this Board. The Electrician was absolved of any guilt. See Second Division Award 11917.

Payment for the excessive 15 days the Claimant was suspended shall be in accordance with Rule 35 (g). There is no basis to support any claims for rights or benefits that are not specifically provided for in Rule 35 (g).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

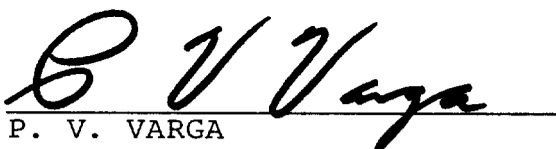
Attest: 
Nancy J. Dever - Executive Secretary

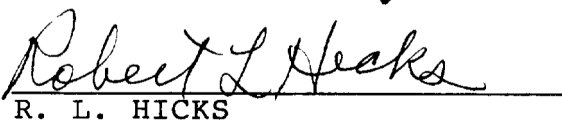
Dated at Chicago, Illinois, this 1st day of August 1990.

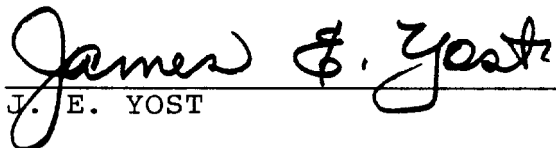
CARRIER MEMBERS' DISSENT
TO
AWARD 11915, DOCKET 11833
AND
AWARD 11917, DOCKET 11840
(Referee Prover)

Claimants were part of a "crew" that was given a specific assignment and refused to comply with proper instructions. Claimant Brown never did comply. The other two members did not comply until after they, that is, the "crew," were summoned to the Assistant General Foreman's office. The "crew" demonstrated their collective insubordination with their feet. While the Majority finds the Sheet Metal Worker guilty, it concludes that there is no "...conclusive evidence...that (the electrical worker) was guilty of insubordination..." That the electrical worker "crew" member was not with the other "crew" members does not warrant the assumption that he was proceeding to hook up the consist of Train 107.

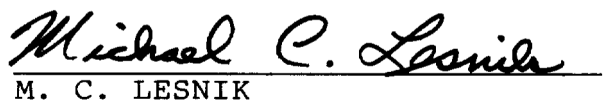
We Dissent.


P. V. VARGA


R. L. HICKS


J. E. YOST


M. W. FINGERHUT


M. C. LESNIK

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