Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9550
SECOND DIVISION Docket No. 9160
2-DM&IR-CM-'83

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Duluth, Missabe & Iron Range Railway Company

Dispute: Claim of Employes:

1. That Carman Paul S. Larson, Proctor, Minnesota, was unjustly treated and the provisions of the current Agreement were violated when he was suspended from service for a period of twenty (20) working days, February 18, 1980 through and including March 16, 1980.

2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to compensate the above named carman eight (8) hours pay for twenty (20) workdays, February 18 through and including March 16, 1980.

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.

Carman Paul S. Larson was charged with insubordination in refusing an assignment on January 24, 1980 in violation of the Code of Conduct and Safety Rules for the Mechanical Department effective December 1, 1972, Part 2, General Notice, Number 4. An investigation was held on February 5, 1980 and on February 13, 1980 Claimant was suspended for twenty days.

A review of the record before this Board establishes that Claimant was twice given direction by his foreman to work on track 1 and 2 and twice informed the foreman that he did not want to go to that assignment. Claimant's conclusion that he was given the "option" of going to the directed assignment or going home, and that he followed directions by choosing to go home strains credulity. From the circumstances and the exchange between Claimant and the foreman it is clear that Claimant was either to follow the foreman's instructions or be suspended. Claimant chose not to follow the direction to go to tracks 1 and 2 and was appropriately suspended. Whatever Claimant's reason for not following directions, be it his interpretation of seniority practice or mere inconvenience, as an employe with over thirteen years service he should have followed the direction and then grieved. There was substantial evidence to sustain Carrier's decision to discipline Claimant. However, absent any prior record of insubordination during Claimant's tenure with the Carrier, the penalty of a twenty day suspension is

too severe and strikes as excessive and punitive rather than corrective. Accordingly the twenty day suspension is reduced to a ten day suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of July, 1983