

Award No. 10107
Docket No. SG-9733

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee on the Atlantic Coast Line Railroad Company that:

(a) The Carrier wrongfully disciplined and suspended Signalman John E. Russ following the investigation of an incident which occurred on May 29, 1956, at Jesup, Ga., for which he was charged with "uncivil conduct and insubordination."

(b) The Carrier now pay Signalman John E. Russ at his regular Signalman's rate of pay for each day he was held out of service as a result of the disciplinary action taken by the Carrier specifically May 30, 1956, to July 28, 1956.

OPINION OF BOARD: This is a disciplinary case.

John Edward Russ, the Claimant, was hired as a signal helper on November 27, 1950; on January 5, 1951, he was promoted to Assistant Signalman; and on October 1, 1953, he was promoted to Signalman. On January 16, 1956, he was assigned to Foreman J. B. Maultsby's crew.

On May 29, 1956, Foreman Maultsby and his crew began working at Jesup, Georgia at 7:00 A. M. Signalman Russ, Signalmen C. H. Brewer and Assistant Signalman C. A. McCall were all engaged in digging a cable ditch under the pass track at the Jesup Yard. Around 8:45 A. M. — Foreman Maultsby removed Mr. Brewer from the group because of too much talking between him and Russ and assigned Brewer to a spot some distance from Russ and McCall.

Approximately ten minutes later Foreman Maultsby returned to Russ' work area and reportedly directed Russ to dig toward Brewer. An argument developed, an interchange of remarks between Russ and Maultsby occurred and Maultsby alleged that Russ threatened him with a knife.

Mr. Maultsby reportedly directed Russ to go to the camp cars and informed him that he was through on his (Maultsby) gang. Russ replied that

"he wasn't going no damn where" and got back in the ditch and resumed his digging.

Mr. Maultsby conferred over the telephone first with his superior, Mr. J. S. Webb, Chief Engineer of Communication and Signals — who reportedly instructed Maultsby to take Russ out of service and then he talked with Lieutenant M. L. Carlton of the Carrier's Property Protection Department. Maultsby signed a warrant charging Russ with assault. Lt. Carlton and Chief Deputy Sheriff L. B. Warren of Wayne County, Georgia, arrived around 11:25 A. M. that same day; Deputy Sheriff Warren served the warrant on Russ and took him to the County Jail. Later, Russ was released on bond.

An investigation was held. Russ was charged with "uncivil conduct, insubordination." On July 5, 1956, Russ was notified that he was assessed sixty calendar days' actual suspension beginning May 30, 1956 and ending on July 28, 1956.

The Organization contends that the Claimant received unwarranted discipline on unsustained charges.

The Carrier contends that the discipline meted out to the Claimant was just and proper and was neither arbitrary nor capricious.

No procedural defects are cited in this case and the claim was properly progressed to this Board.

The pertinent rules involved are as follows:

"Operating Rule G-1:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, wilful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statements, or concealing facts concerning matters under investigation will subject the offender to summary dismissal."

"Agreement Rule 50:

"An employe who considers himself unjustly treated where no discipline is involved, shall have the right of hearing and appeal as provided in Rule 46, if written request is made to his immediate superior, within ten (10) days of the cause of complaint."

Facts established by the Record are as follows:

1. That Maultsby was Claimant's Foreman;
2. That Maultsby had the right to direct Claimant's work activities;
3. That Maultsby had the right to hold Claimant out of service;
4. That an angry interchange of remarks took place between the Claimant and Maultsby;
5. That Claimant did not follow Maultsby's instructions; (Maultsby reported he told Claimant to go to the Camp Cars, whereas the Claimant stated Maultsby told him to go home.)

6. That Claimant told Maultsby that he (Maultsby) was not going to send Claimant any damn where.

7. That Claimant — after his argument with Maultsby — resumed his digging.

8. That Claimant was guilty of insubordination; (Claimant stated that it would have been insubordination if neither he nor Maultsby were mad);

9. That Claimant was angry at Maultsby for moving Brewer to another work area;

10. That Claimant was nervous and that he could not stand riding.

An objective and analytical evaluation of the facts, *supra*, give negative support to the Organization's position that the Claimant was wrongfully disciplined.

There is no doubt that the Claimant refused to follow his Foreman's orders. Consequently, the Claimant was guilty of insubordination — a very serious offense. However, based on the evidence, the Board is not disposed to rule that the Claimant was also guilty of uncivil conduct.

If, as the Claimant alleged, Maultsby was riding him, his (Claimant's) remedy lay in Agreement Rule 50 — not in argumentation and insubordination.

Accordingly, the Board holds that the Claimant was not wrongfully or unjustly disciplined.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.