

Award No. 17045
Docket No. MW-17517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The "thirty (30) calendar days actual suspension, commencing November 28, 1966 and ending December 27, 1966, both dates inclusive" imposed upon Carpenter-Truck Driver Fred R. Snyder was improper and without just and sufficient cause. (System File 30-20-186)

(2) Carpenter-Truck Driver Fred R. Snyder's record shall be cleared of the charge and he shall be compensated for wage loss suffered, all in accordance with the provisions of Section (e) of Rule 22.

OPINION OF BOARD: The record in this case discloses that Claimant, on the date involved herein, was 60 years of age with service dating from June 17, 1929 (37 years); that Claimant held seniority as a Carpenter-Truck Driver and was assigned to Carpenter Gang 202. The record further discloses that Claimant's past record was unblemished. Carpenter Gang 202 had been assigned the duty of painting Bridge 128.14. Claimant had been painting panels of the girders on this bridge, but never at a height of more than 6 feet with scaffolding. On Monday, November 28, 1966, Foreman Gee instructed Claimant to paint at an area on the bridge which required him to be in excess of 30 feet off the ground. Claimant refused to paint at this height, and Foreman Gee then requested Claimant to sign a resignation slip, which he (Claimant) refused to sign. This action resulted in removing Claimant from service pending an investigation. As a result of the formal hearing on this matter, Claimant was suspended from service for a period of thirty (30) days (November 28, 1966 to December 27, 1966, inclusive).

A review of the transcript of testimony taken at the formal hearing reveals that Claimant was a victim of acrophobia, which is defined in Webster's Dictionary as "a morbid fear of being at a great height." This testi-

mony has led the Organization to contend that Claimant's refusal to perform this work was justified in the interest of safety for fellow employees as well as the Claimant himself. There being no evidence to the contrary, it must be assumed that Claimant did have a morbid fear of height.

Carrier contends that Claimant bid on this particular position; that it could be or should have been anticipated that the position would, at times, require painting on scaffolds at substantial heights; and that, therefore, Claimant should either assume the inherent risks of his position or suffer the consequences. This Board cannot agree with this contention. The record is completely void of any showing that similar work at this height had been performed in the past by the employees of this particular class. Carrier offers Award 16104 (House) as authority. That award is distinguished from the instant dispute for the reason that Award 16104 involved employees who had worked a long number of hours, and refused to continue the same work that they had been performing all day; that the employees were "tired out" and did not qualify for the "safety exception."

In this case, there is no showing that Claimant ever performed work at such height prior to the date involved herein; no showing that the work Claimant was instructed to do was inherent to his position; and no showing that Claimant acted with indifference to authority or displayed a rebellious attitude.

To the contrary, the record shows that there was other work Claimant could have been doing, such as clean-up work, or painting the top of the bridge. The fact that this employe was allowed to return to the same position at the termination of his suspension, after learning of his acrophobia, is persuasive to the finding that he (Claimant) could handle the normal duties of his position.

Absent evidence to the contrary, this Board finds that Claimant was and is a victim of acrophobia; that an attempt of Claimant to perform the painting from a substantial height would have subjected himself and his fellow employees to danger and unwarranted personal injury, and that Claimant's refusal in this instance was, therefore, justified. See First Division Awards 13118, 14266, 15532, 17398; Second Division Award 2540; and Third Division Award 14067.

Having so found, this Claim will be sustained.

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

That the parties waived oral hearing;

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 violated.

AWARD

That Claimant's record be cleared of the charge herein and that he be compensated for the wage loss suffered.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 26th day of March 1969.