

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number **21062**  
Docket Number MW-21020

Joseph A. Sickles, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(The **Alton & Southern Railway Company**

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

(1) The suspension of sixty (60) days imposed upon Track **Foreman** Henry Moten **was** without just and sufficient cause (System File K-1638-31).

(2) The charge against Track Foreman Henry **Moten** be stricken from the record and he be compensated for all monetary loss suffered, all in accordance with Rule **20A(d)**.

OPINION OF BOARD: Although Claimant is a Track Foreman, he and his crew also receive instructions **from** the Signal Department. **On** August 9, 1972, he was **performing** a joint project with certain signal **employees**. When it started raining on that date, he instructed his crew to seek shelter in the roundhouse, but, because he had been given specific instructions to "guard the track drill", he sought shelter in **a** caboose; **from** which he could observe the drill.

claimant was charged with failure to comply with certain instructions and, subsequent to investigation, was assessed a sixty (60) day suspension.

It is conceded that Claimant had been instructed by the Track Department **Roadmaster** not to enter cabooses or other cars. However, he argues that, in this case, he had been instructed by **Signal** Department officers to guard the drill, and thus, when it started raining he was placed **"...in** an awkward and confusing position of deciding with which instructions to comply."

Carrier notes that Claimant signed and returned the following letter of instruction:

"Effective **immediately** no **employee** in the M/W Department will be permitted in **or** on cabooses or other railroad cars unless they are involved with their line of duty such as a work train. Anyone violating this **rule** will be properly disciplined."

Moreover, it asserts that this record shows no conflict in instructions.

The Board will freely concede that conflicting instructions can generate a confusion to the point that an **employee** is placed in an untenable position. We will also concede that such a conflict may be more potential when there is joint supervision. But, we are unable to conclude, under this record,

that **Claimant was** placed in any such **dilemma**. He **knew** he **was** not to enter cabooses. Had his only reasonable avenue of compliance with instructions concerning the drill been to disregard the prior instruction, then of course, we would consider the dispute in that light. **But** here, there is no suggestion **that** entry into the caboose **was necessary** in order to protect the drill. Rather, it appears that such action **was** merely convenient.

**While** the length of the suspension appears to be rather significant, at the same time, it would not appear to be arbitrary or **capricious**. Thus, we are precluded from substituting our judgment for that of Carrier.

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

ATTEST: A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.