

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21647
Docket Number MU-21447

William G. **Caples**, Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: ((Chicago and Eastern Illinois Railroad Company

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

(1) The Agreement **was** violated when the Carrier disciplined Messrs. L. D. Riley, **R. L. Neilson, M. L. Satterfield, J. Nowitzke, R. L. Turner, T. L. Rays, M. O'Keefe, S. R. Wilkins, M. G. Lowry, N. D. Marlow, S. R. Bourg, L. E. Langley, R. D. O'Keefe** and **G. C. Dodson** by suspending them from service on various dates in May, 1974 without benefit of the investigation and other procedural stipulations of Rule 34 (System Files M-214-46 and M-214-47).

(2) Each of the claimants identified above shall **now** be reimbursed for any loss of compensation (Rule 34-d) resulting from the aforesaid violation.

OPINION OF BOARD: The Claimants are all regularly employed **trackmen** who had been in service over 60 days and whose applications for employment had been approved. The claimants were advised by the Foreman and Assistant Roadmaster that the length of their hair did not meet Carrier's **standard of grooming**. They were given five days in which to meet the standard and were allowed to continue work during the five day period. At **the** end of the five day period, all having failed to meet the standard, each was advised they would be held out of service until they had complied with the carrier's grooming standards. **They** were also advised that they could return to work when **they** had complied with the grooming standards. All, except one, stayed out of service for varying lengths of time until they had complied. The one exception complied without losing any time. Each returned to work when he had complied.

It is the position of the **employee-claimants** that holding them out of service was in fact a discipline, suspension, "without benefit of investigation as provided in Rule **34(2)**" of the Agreement, which provides, among other things:

"(a) **Employes** shall not be disciplined or dismissed without a full and impartial investigation of the circumstances"

The position of the Carrier is that mere refusal to permit an **employe** to work until he complies with prescribed standards for his position does not constitute discipline.

The validity of the grooming standards was not attacked on the property or in the record and is not an issue before the Board.

The Claimants cite a Second Division Award, Award No. 3070, as precedent for their position in this case; however, the facts in 3070 are at considerable variance with the facts before us here. In Award No. 3070, the Employes (1) were notified by **written** notice of the grooming standards and that they "must comply", (2) they were subsequently advised by letter they were not complying and (3) if they did not comply the railroad would "take disciplinary action." Subsequent to the letter, the Claimant in that case tried **to** comply by having his hair cut twice, neither time meeting the standards in the opinion of his supervisors and he "was removed from service . . . **for** being in violation of the standards." Claimant was on the date removed from service advised in writing to report for a disciplinary investigation. The claim was that the Claimant "was unjustly withheld from service and unjustly dismissed **from** service following the investigation." The question decided by that Board was "did the company have a valid rule and if so was the rule properly applied." These are not questions in this case.

There is also in the record before us a discussion of another instance **with** another **employe**, one D. L. Smith, but this was not brought up on the property and is not properly in evidence and **cannot** be considered (Awards 16849, 20214, 14417, 21058, and many others).

The question we must decide is whether the mere refusal to permit one to work because he does not meet standards established for the service is of itself discipline.

There is a long line of precedent that it is not.

Here the men were told they were not in compliance with an established standard. The men at the same time were told they would be scheduled on when in compliance. The record fails to reveal any time limit in which to comply or give any inference of any discipline for failure to comply.

On the facts in this record, Claimants were not suspended from service as contemplated in Rule 34(a). They were merely held out of service for violation of a regulation, (the **reasonableness** of which is

not in issue in this case), pertaining to the Claimants' work requirements. In this sense the men were not disciplined. (Third Division Awards 11323, 14172, Second Division **Award** 5902 among others).

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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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

The Agreement was not violated.

A W A R D

All Claims dismissed.

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

ATTEST: *A.W. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this **18th** day of August **1977**.