

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21956  
Docket Number MW-22029

George S. Roukis, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(The Colorado and Southern Railway **Company**)

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

(1) The discipline assessed **Trackman** G. L. Bowling was without just and sufficient cause **and** based upon unpreferred, unproven and disproven charges (System File **C-12-76/MW-390**).

(2) **Trackman** G. L. Bowling be restored to service with seniority **and** all other rights unimpaired, his personal record be cleared of the charges placed **against** him **and** he be reimbursed for all **wage** loss suffered **until** he is restored to service.

**OPINION OF BOARD:** The Board has carefully reviewed the chronology and substantive developments of this case.

**Recognizing** that the efficient administration of a rail transportation system **presupposes** prompt **and** obedient adherence to safety rules and **regulations**, we scrutinized the record to determine if claimant's **charged** insubordination represented willful behavior, inconsistent with the disciplinary requirements of the carrier.

**While** we do not condone claimant's apparently indifferent response to Supervisor Martinez's concern for strict safety rule observance we feel nevertheless that the testimony in the investigative transcript supports the reasonable conclusion that claimant made some **minimal** attempt, albeit somewhat **unorthodox**, to comply with the spirit if not the letter of Rule 17, Burlington **Northern** Safety Rules.

He clearly was under **an** obligation, of course, to apprise his supervisor that his work shoes were in the repair shop. He could have, at least, noted this situation on June 24, 1976, when he reported for work in low-cut dress leather shoes. That he did not do so is **certainly** not praiseworthy. We cannot expect supervisory personnel to divine employee intent by symbolic behavior, **similarly** with his failure to protect **his** job on June 25, 1976. While we find that claimant did not report to work on the aforesaid date, we believe that the Assistant Superintendent's instruction to Supervisor Martinez on June 24, 1976, to send **claimant** home because he wasn't wearing the proper footwear was sufficiently persuasive to claimant to dissuade him **from** reporting to work until he had the required work shoes. We do not feel that this absence was **willful** or blatantly calculated, but surely it was less **than** the reasonable norm.

**Hopefully, by this time,** claimant's dismissal since July 30, 1976 **will** have indelibly impressed upon him the necessity **for** more **communicative** responsible behavior. This Board **w-ill** not **countenance insubordinate** or **willful** acts. **But** the facts in this case support the finding that **claimant** made some **attempt** to wear other than cloth or canvas shoes on June 24, 1976 and remained away **from his** assigned position on June 25, 1976, because of his construction of the supervisor's instruction to remain off the job until he **had** the required shoes.

Accordingly, based on the record we will reinstate claimant to his prior position with unimpaired seniority but without **back pay**.

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;

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

The Agreement was violated to the extent expressed in the opinion.

A W A R D

Claim sustained to the extent expressed in the opinion.

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By Order of Third Division

ATTEST: A.W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.