

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22157 ~
Docket Number MW-22170

Abraham Weiss, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employes**
 { **(Louisville and Nashville Railroad Company**

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

(1) The dismissal of **Track Repairman R. A. Dunn** was without just and sufficient cause and wholly disproportionate to the offense with which charged **/System Pile 1-17(7)/D-106485 E-306-14/**.

(2) **Track Repair- R. A. Dunn** shall be restored to service with seniority, vacation and all other rights unimpaired and payment be made for all time lost."

OPINION OF BOARD: **Claimant** was dismissed for refusal to start work when he reported at his duty station because it was raining heavily. Evidence at the hearing discloses that two other gangs at the site were permitted to-in in the tool house until the rain diminished or stopped and that the main line was not blocked. **Claimant's foreman**, at the hearing, stated that he did not consider the work to be done was of an emergency nature. He also stated that at other times, work was stopped on account of weather in connection with routine (non-emergency) work.

Claimant's refusal to work in the rain resulted, after appropriate investigation, in his dismissal for insubordination. It is understandable that some discipline was warranted under all the given circumstances. This is in keeping with the basic principle, well accepted in labor relations practice in industry, that an employee must comply with the instructions of his supervisor and grieve later. In the railroad industry especially, chaos would result if employees took it upon themselves to withhold their services at any time at their own discretion. The only exception to the "comply now and grieve later" doctrine arises out of situations where an employee's life or limb would be endangered (or the employee, in good conscience, believes there exists an imminent personal danger) by complying with instructions. This is not the case here. The claimant simply refused to comply with the foreman's instructions because other gangs present nearby were not being required to work in the rain.

If **claimant** felt that ha was being unjustly treated in comparison to other gangs, his **remedy** lay within the grievance procedure, and not **unilateral** refusal to work. The proper procedure is for an **employe** to follow the instructions of his supervisor (unless obviously **unsafe** or **unlawful**). Claimant did not have the right to refuse to do a job assigned to him within his occupation, **where** health or safety hazards were not present, as was the case here. Claimant's recourse was to do the work and file a grievance to redress the wrong, if he felt his **supervisor's** instructions were unfair or discriminatory. **That is the whole purpose** of the grievance procedure. **In brief, an employe may not take the law into his own hands and refuse to perform the assignment properly given him by his supervisor.** This principle is well established in prior Awards of this **Board.**

It is understandable that **some** discipline **was** warranted under all the **given** circumstances. Claimant acted **improperly** and **as a** result subjected himself to the **possibility** of discipline by the Carrier. We are of **the opinion, however,** that the offense, as brought out by the evidence **given at** the hearing and investigation, especially in **view** of the mitigating **circumstances** described above, was not of such a degree as to **warrant** the drastic **penalty** of dismissal.

In light of all the factors and **circumstances** previously described, it **is our** view that the discipline **imposed** by the Carrier was unduly harsh. A **well** established principle in labor arbitration is that an **employe's** past record **must** be given considerable weight when **assessing the** propriety of any **disciplinary penalty.** Neither the evidence at the hearing nor the **correspondence** on the **property** furnish any evidence of previous discipline being **meted out** to **claimant** for acts of like kind or other violation of Carrier's rules. Claimant's **foreman, at the hearing,** testified that **claimant** "follows instructions pretty good."

In **view of** his past record and the above **mitigating circumstances,** the Board is inclined to modify the discipline as it was excessive, **and counsel** the **claimant** that we consider this his last chance to **improve** his record.

The period since his discharge **shall** be deemed a **suspension.** Claimant **will** be restored to service within ten (10) days of the date **hereof, with** seniority rights **unimpaired 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;

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

That the **discipline** assessed was too harsh and excessive.

A W A R D

Claim sustained to the **extent indicated** in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *C. W. Paulke*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.