

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22511
Docket Number CL-21974

James F. Searce, Referee

(Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station **Employees**
PARTIES TO DISPUTE: (
(Illinois central Gulf **Railroad**

STATEMENT OF CLAIM: Claim of the System **Committee** of the **Brotherhood**
(GL-8354) that:

"(a) Carrier violated the Agreement when it wrongfully
suspended L. C. Marshall following an investigation held at **Homewood,**
Illinois, May 3, 1976, and that

(b) Carrier **now** be **required** to compensate claimant Marshall
at the rate of **\$47.04** per day, for **April 23, 24, 25, 28, 29, 30; May 1,**
2, 5, 6, 7, 8 and y, 1976, and his record cleared of all charges as a
result of being held out of service pending investigation and the
decision rendered on the alleged charge of insubordination April 23,
1976."

OPINION OF BOARD: On April 23, 1976, Claimant -- a **Stockman** -- was
instructed on three different occasions to assist
another **employe** in the operation of an overhead crane. There is
nothing to indicate that such **orders** were not issued by the appropriate
supervisor or that the order to assist the crane operator was not
clearly within the Claimant's duties. The **first** order was given while
the Claimant was **working** at a desk; the Claimant did **not** engage the
supervisor in eye contact at the time nor did he orally respond. Some
time passed and the Claimant's **supervisor was** queried by the crane
operator as to the assistance assured him, indicating that the Claimant
had not reported. The supervisor sighted the **Claimant** on the floor
above him in the stock area and again instructed him to assist the
crane operator. The Claimant again did not respond, but did look
directly at him during the issuance of such instructions. An hour and
a half later, the crane operator informed the Claimant's supervisor that
he was still **without** assistance. The supervisor located the Claimant
and upon questioning as to why he had **not** followed instructions, the
Claimant protested that two other **employees** could be assigned such work.
According to **the Carrier**, the Claimant commenced berating his **supervisor**
and further refused to work on the crane. At that point he was taken
out of **service.**

The **Claimant contends:** that the first he heard about the need to assist the crane operator was around 10:00 a.m. (the last **time** the Supervisor raised the matter); that he did **not** question the **assignment**; and that he was preparing to go to the **crane** when he was **removed from service**. The **Organization** raises a **procedural** question as a defense in this matter -- It objected to the **charging** supervisor being present **in** the **hearing** while testimony was being elicited from the Claimant. We find no error **in** the **Hearing Officer's decision** to permit the supervisor to be present **during such testimony**. As to the merits of the **case**, only two **witnesses** to the **incident** testified at the hearing -- the **Claimant** and his **supervisor**. (Another witness was **notified**, but failed to appear.) While **recognizing** that it is **not the Board's responsibility** to reconcile Conflict* **testimony**, we are compelled to conclude that a review of the records **and the circumstances involved gives credence to the Carrier's version of events**. The **Claimant did not** contend that the supervisor did Mt approach him twice prior to the 10:00 a.m. confrontation; he merely **indicated the** latter encounter was the **first time he heard the** supervisor. This oblique disclaimer, coupled with the apparent **pendant** of the Claimant **not to respond when** addressed, supports the Carrier's contention that **the Claimant** heard what he chose to hear. While the **Claimant may** have preferred **not** to work with the crane on that **day, unless** he was prepared to **demonstrate why** it was not properly within his range of duties (even **then** an "obey and grieve" action may have **been proper**) or that he was **physically** incapacitated, he was obliged to perform such work.

We find **no reason** to upset the **Carrier's** discipline **in** this case.

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.

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Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1979.