

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22641
Docket Number m-22669

Dana E. Eischen, Referee

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

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

(1) The dismissal of Track Repairmen Raymond Easley, John Washington, David **McLeod**, Warren Russell, William Dyess, Steven Dahl, .B. M. Moseley, Bobby Rogers, Richard Greet, Jr. and William Dexter was without just or sufficient cause and was arbitrarily and capriciously imposed (System File 1-17 (26) (77)/D-106794 E-306-14).

(2) Each of the **claimants** shall be restored to service with seniority rights unimpaired and with pay for **time** lost in **conformance** with the provisions of the first paragraph of Agreement **Rule 27(f).**"

OPINION OF BOARD: On the morning of Friday, April 22, 1977, each of the Claimants **walked** off the job in defiance of their Foreman's instructions to remain and work. It was raining that **day** and during a pre-work assembly the men wrongly concluded that they had the right under their collective bargaining agreement to decide for themselves whether or **not** to work in the rain. They took a straw poll and voted not to work but to go home. Foreman Henderson tried unsuccessfully to dissuade them from their announced intent to leave the property. He then telephoned **Roadmaster** Rogers and reported the situation. At Rogers' **direction** Henderson again told the **men** they had no right to walk off **the job** because of rain and advised that if they did so they should not come back to work on Monday. In the face of that advice Claimants nonetheless **walked** off en masse, with Foremen **Henderson** and Ward continuing to remind them that they were exposing themselves to disciplinary action and possible termination.

Claimants were terminated for their action and subsequently afforded an investigation pursuant to **Rule 27** of the Agreement. Following the investigation the terminations were upheld and the instant claim was initiated and appealed through the grievance machinery to our Board. It is **important** to note that of the ten (10)

original Claimants **named supra**, only six (6) remain properly before **us** because **Claimants** Easley, Washington, **Russell** and Greer, Jr.-all accepted leniency reinstatements without back pay in return for withdrawing their claim for time lost due to the disciplinary action.

There was no procedural impropriety in the disciplinary action and the only questions before us go to culpability and appropriateness of penalty. After reviewing all the facts of record we are persuaded that Claimants **wilfully** engaged in unjustified insubordination on April 22, 1977. They **were** disabused of their incorrect notion that they had a contract right to decide for themselves whether to work in the rain. They were instructed to stay on the job and warned that discipline would follow if they did not obey. Yet they persisted in their refusal to work. An **employee** who knowingly disobeys reasonable instructions from an authorized **supervisor** exposes himself to disciplinary action unless he can prove justification for his conduct. Apprehension of imminent physical harm is one such recognized justification, but these **employees** have fallen far short of proving that situation **on** this record. **On** the facts before us there is no doubt **that** they are vulnerable to disciplinary action by Carrier. Nor **is Claimant McLeod** any less culpable even though he later in the day visited his dentist. **He**, like the others, reported for work but then refused to work in the rain **in** direct contravention of orders from supervision.

Although persuaded of their guilt, **we** are not convinced that these men are incorrigible malingerers. We note that there was no element of hostility or belligerence in their action. Certainly we do not condone their behavior but we are of the opinion that they deserve a last chance to prove that they can learn from this experience. Accordingly, we find that suspension without pay rather than **outright** termination is the appropriate penalty. We shall direct Carrier to return Claimants to service without back pay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

That the penalty of dismissal was too severe in the circumstances.

A W A R D

Part 1 of claim is denied.

Part 2 of claim is sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of **November 1979.**