

RATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 23037  
Docket Number M1-23081

Rodney E. Dennis, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(  
(Seaboard Coast Line **Railroad** Company

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

(1) The suspension of fifteen (15) days imposed upon **Trackman** N. E. Roberts was without just **and** sufficient cause **and** on the **basis** of unproven and disproven charges (System File C-4 (13) **-NER/12-39 (78-18) J**)

(2) **Trackman N. E. Roberts'** record shall be cleared of the charges leveled against him and he **shall** be reimbursed for all wage **loss** suffered."

**OPINION OF BOARD:** Claimant is a **trackman** assigned to Section Sang 7065, headquartered at Croom, Florida. On November 30, 1977, claimant's gang was assigned to work with two other gangs to repair a high-way crossing at Floral City, Florida. Roadmaster T. C. Simmons was in charge of the job and E. E. Ellis was foreman of Gang 7065.

In the early **morning**, the roadmaster observed claimant talking in a loud voice **and** singing. He asked Foreman Ellis about this. **Foreman** Ellis explained that it was claimant's normal behavior. **The roadmaster called** claimant to the **side** and spoke to him. **Claimant** walked away and went back to work, before the conversation **was** concluded. **In** a loud voice, the roadmaster ordered claimant to return, so that he could finish his **instructions** about talking, singing, and shouting on the job.

Carrier alleges that during this second conversation, claimant told the roadmaster that he could not make him stop talking **or singing**, as long **as** he did not bother others. It is also alleged by Carrier that **claimant** continued **his disruptive** behavior for at least two hours after he was told by the roadmaster to stop. Carrier subsequently charged claimant with disruptive conduct, a violation of General Rule 15 and that portion of Rule **18** relating to insubordination.

A hearing was held **into** the matter. Claimant was **found** guilty as charged and assessed a **15-day**, actual 10-work-day, suspension. A transcript of that hearing has been made a part of the record of this **case**.

A review of that transcript reveals that claimant **was** afforded all procedural rights required by contract. **The** Organization filed a claim **in** the instant case, alleging Carrier **was** arbitrary and capricious in assessing a **15-day** suspension. Carrier denied the claim at every level. It is now before **this Board** for resolution.

A **review** of the record persuades **this Board** that claimant did act in an insubordinate manner toward the **roadmaster** and that he is deserving of some level of punishment for this behavior. Based on the record, however, this Board **des** not think that the employer has carried its burden of proving that claimant, by his action, was **in** violation of Rule **15**.

Rule **15** states:

"Employees must keep physically and mentally fit, stay alert, and work **in** harmony with associates. When on duty, they must **avoid** distractions and keep their minds on their work."

Carrier has not indicated by any specific examples or persuasive arguments in what way claimant **was** in violation of this **rule**. Carrier has more of a responsibility in this instance than **just to** claim that employees were disrupted. It must present some evidence to support **its** statement. That has not been done.

It is interesting to note that Foreman Ellis, when asked about claimant's behavior, told the roadmaster that claimant was only acting normally. It would appear to this **Board** that had claimant's behavior **been** as disruptive as **Carrier claims, some** discussion would have been held with him prior to the major incident in this case.

This Board also wants to **point** out to **claimant** that it does not condone his attitude concerning authority on the job, and that this award can in no way **be** interpreted **as** doing so. We have arrived at our decision based on Carrier's failure to prove part of its charges involving Rule **15**.

**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 was excessive.

A W A R D

Claim sustained in part and denied in part. The **15-day**, actual 10-work-day suspension shall be reduced to a **7-day**, actual **5-work-day** suspension.

RATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.