

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23907
Docket Number m 24264

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(**Illinois** Terminal Railroad Company

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

(1) The twenty (20) day suspension imposed upon **Trackman** S. J. Frison for alleged violation of 'Rule **H**' was without just and sufficient cause and on the **basis** of unproven charges (**ITRR 1980-31**).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: An investigation was held on August 1, 1980 to determine whether Claimant, a track laborer, was guilty of insubordination on July 21, 1980 when he allegedly refused to obey instructions issued by Foreman R. D. Frey, Jr. Specifically, Claimant was directed to resume **unloading** switch ties from inside a railroad car which necessitated hooking the ties to the Speed Swing Cable. Based on the investigative record, he was found guilty of violating Rule **H** of the **Illinois** Terminal Operating Rules and assessed a twenty (20) days suspension. This disposition was appealed.

In defense of his position, Claimant contends that he was not insubordinate, since it was unsafe to enter the railroad car at the time Foreman Frey directed him to unload the ties. He testified that he believed if his co-**worker** had pulled up the cable, the ties would have slipped together and he would have been injured. He argues that his foreman was unaware of the unsafe conditions inside the car since he was on the ground when he issued his instructions and could not observe what was occurring inside the car. He testified that his foreman disregarded him, when he tried to apprise him of the situation and **asserts** that he complied with Carrier's applicable safety regulations.

Carrier contends that he was clearly insubordinate when he refused to comply with the foreman's instructions, since he persistently argued with Foreman Frey that one man could handle the cable inside the railroad car. The Foreman testified that one man could not safely handle the cable and noted that Claimant endangered himself by remaining on the edge on top of the car. The Foreman testified that he had given Claimant a direct order to **unload the ties**, but it wasn't until he was compelled to radio the Roadmaster for assistance that Claimant finally complied with the order.

In our review of this case, we concur with Carrier's position. Recognizing the validity of a defense that unsafe **working** conditions justify an **employee** from exposing himself to danger, we do not find these conditions to be present here. Outside of Claimant's averment that it was unsafe to enter the car, we have no supportive or corroborative evidence that it was unsafe

to perform his duties. There was no **confirmatory** testimony by Track Laborer Randy Miller that it was unsafe to enter the car and Claimant's argumentative behavior patently reflects uncooperative conduct. It appears that Foreman Frey was concerned with the safety of the two track laborers when he ordered them to **resume unloading** ties from inside the **car**, but Claimant's refusal to comply with this order, militated against safe operations. Both track laborers were in fact, placed in danger by Claimant's perception that **one man** could handle the speed swing cable inside the car and his deportment was insubordinate when he refused to obey Foreman Frey's instructions. Moreover, it was not later excused or mitigated when he decided to comply with the order, since it required Foreman Frey's call to the **Roadmaster** to enforce his **compliance**.

As a rule, we are reluctant to modify a disciplinary penalty where the evidence of record affirms the charges, but **we** believe in this instance, that twenty (20) days suspension, especially **in** view of **Claimant's** apparent past satisfactory employment record, is **somewhat** excessive. We will **reduce** the penalty to ten (10) days suspension with the understanding that we will not look kindly upon any future recidivist behavior. An **employee**, to be sure, **can** refuse to work in an unsafe environment, but he **runs** the risk of disciplinary punishment, if he cannot demonstrate persuasively that safety **was** at issue. **In** this case, we have no evidence that the inside **of the** railroad car was unsafe and Claimant was insubordinate when he refused to enter it to unload ties.

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 violated.

A W A R D

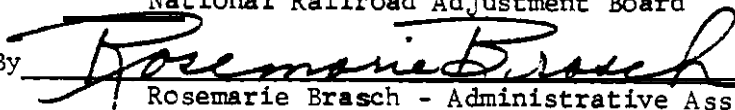
Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary

National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June **1982**: