

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23909
Docket Number CL-23778

Carlton R. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight **Handlers, Express** and Station **Employees**
(**Baltimore and Ohio Railroad company**

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood (GL-9290)
that: :

(1) Carrier **violated** the Agreement at **Baltimore, Maryland**, when it suspended **from** service Mr. C. E. Wfetschar, Extra Clerk, for **thirty (30)** days, beginning February **4, 1978** through March **5, 1978**, when he declined to physically check tracks, **unaccompanied**, to avoid jeopardy to his **personal** safety, and

(2) Mr. Wietscher shall be compensated for all wage losses **between** February 4, **1978** and March **6, 1978**, the period of **suspension**, and his record be cleared of charges **in connection** therewith.

OPINION OF BOARD: Tha Claimant was suspended for a period of thirty days for his refusal to check the yard tracks at Curtis Bay unless **someone ♦♦♦ ♦** • ssfigned to • cccpany **him on** this mission. There is no question but that the instructions were clear, that they were **understood** by the Claimant, **and** that he refused to follow them unless someone went with him. The **Claimant** received his **instructions** first **from** the Assistant Chief Clerk and, **in turn, from** the Assistant Manager **all** with the threat of discipline if ha did not **comply**.

There is also no **question** but that, **standing** alone, the refusal to comply with instructions is subject to disciplinary action. An orderly process dictates that **an** aggrieved **employee** should obey the instructions and grieve later, **however**, in Award **22525** the additional element of safety **hazard** was raised wherein the award provided as follows:

"It is well settled that **employees** must comply with instructions of superior officers and then complain **later** **if** they think they have **been** mistreated, except where a real safety **hazard** may be involved."

The safety **hazard** alleged **herein** by the **Claimant** is the requirement to visit a yard to inspect tracks at **1:30** in the **morning in** a dark and alleged dangerous area **unaccompanied** by a fellow employee. The Carrier alleges that the area is safe and no such extra employee is involved.

The **Claimant**, having failed to **carry** out the instructions of his supervisor, must carry the burden of proof to indicate why it would be dangerous to **enter** this area alone. The Claimant has pointed **out** that 85 **employees** had signed a document delivered to the Division **Manager** four **months**

prior to this incident pointing out unsafe working **conditions** at various locations including the area where the Claimant was to be sent.

It was also pointed out that **in 1974**, there had been an **injury** to a fellow **employee** who was assaulted **and** robbed in this area. The Claimant pointed out that five days before his **refusal to** enter the area unaccompanied, he had been dispatched to accompany a **fellow employee** who was to check the **same** area. The record **indicates** that because of the **nature** of these areas, that there had **been** a practice of sending two employees to check tracks **in** isolated areas but the record further shows that the **Division** Manager attempted to stop this practice by placing the following in the Assistant Chief Clerk's log book on October **7, 1977**:

"**C. McAbee, per Division Manager.** There is no **area** where it is unsafe to send a checker. If **a** clerk refuses, log the incident. Action will be taken. **This is our** instructions as **of** this period."

A reading of the record in its entirety indicates that there was certainly cause for the Claimant to be concerned for his safety if he followed the instructions given to him on the evening of the incident. Whether there is sufficient basis for his then refusing to comply with the instructions must be decided by taking into **account** all of the facts involved. In this regard, it is significant that there had been **some** incidents in these **remote** areas and that a substantial **number** of employees had complained about the danger in these areas. In weighing the factors in this matter, we are impressed that this was not an absolute refusal by the Claimant, but rather one which was qualified. The Claimant was willing to enter the area, at least if there was the protection of **two** persons entering the **area** at the same time. we don't find here an absolute refusal on the part of the Claimant, however, the Claimant in refusing to follow an order does so at his own risk; namely, that of being able to establish clearly that a danger did exist. It is difficult to evaluate the real extent of the danger on the particular evening when the refusal was **made**, so that we cannot **say** that there was not a basis for discipline to be imposed by the Carrier.

However, under all the factors involved including many of the uncertainties, **it** is clear to us that a thirty-day suspension is excessive even if the fears of the **Claimant** were unfounded. **The** Carrier has a duty under these circumstances to **communicate** with all the employees involved that it is going to **enforce** its change in policy with **a** complete explanation **as** to why it is satisfied that the danger which it once recognized by sending employees out in pairs no longer exists. Certainly there was enough **in** the way of extenuating factors which could give the Claimant **some** cause for concern. **Under** these **circumstances**, we find that any suspension in excess of three days is not warranted.

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.