

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24105
Docket Number MW-24180

Herbert L. Marx, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Chesapeake and **Ohio** Railway Company

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

(1) **The** discipline (ten days of overhead suspension) imposed upon Messrs. **J.** J. Martin, M. R. Stratton, B. **Conn** and R. D. Ray for alleged 'failure to obey your supervisor's instructions' on March 11, **1980** was without just and sufficient cause and upon the basis of unproven charges (System File C-D-9431 **MG-2787**).

(2) **The** claimants' personal records shall be cleared of the charge leveled against them.

OPINION OF BOARD: The claimants, four members of a track crew, were disciplined by imposition of a ten-day "overhead" suspension for their "failure to obey your **supervisor's** instructions" on March 11, **1980**. The record of the investigative hearing shows that the offense was of brief duration and under somewhat unusual **circumstances**, but the penalty determined by the Carrier was also of extremely light severity, giving no cause for the Board to disturb it.

Involved herein was the operation of certain equipment required in track repair work. A Foreman was directed by his superior, the Assistant Track Supervisor, to order the crew to operate the equipment. The Foreman, however, admittedly did not issue such direct orders but apparently merely inquired as to the crew's willingness to operate the equipment. Thereafter, a Track Supervisor **came** to the scene. Again, direction to the Foreman (who is not a charged **employee** before the Board here) to order the crew was to no effect.

The Track Supervisor then directed the Assistant **Track Supervisor** to order the crew to operate the equipment. **There** is **some** conflict in the testimony at the hearing as to the manner and effectiveness of the Assistant Track Supervisor's statement to the crew. The crew, however, **failed** to move to operate the equipment in response to him. When the Track Supervisor himself gave the order, the crew complied.

The Board finds that the Carrier had sufficient basis to determine that there had been a failure to obey orders promptly. If the crew had some complaint as to the propriety of the order or the manner in which it was given, the well known remedy is to comply first and then to seek a remedy through the claim procedure. For a brief offense, a modest penalty was imposed.

FINDINGS: **That** 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.

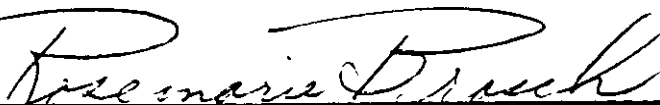
A W A R D

Claim denied.

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 14th day of January 1983.