

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24320
Docket Number MW-24095

Gilbert H. Vernon, Referee

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

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

(1) The dismissal of Track Laborer R. H. Ward for alleged insubordination on February 15, 1980 was **unwarranted, without** just and sufficient cause and on the basis of unproven charges (System File C-D-956/MG-2798).

(2) Track Laborer R. H. Ward shall be reinstated with **seniority** and all other rights **unimpaired**, his record cleared of the charge leveled against him and he shall be compensated for ● llwaga loss suffered."

OPINION OF BOARD: On February 21, 1980, the Claimant was directed to attend an **investigation** to be held **March 3, 1980**. The letter read in pertinent part as follows:

1 "You are charged with being insubordinate when you refused to perform service as instructed by your foreman at about 10:15 a.m., Friday, February 15, 1980, at Mile Post 387.1, Claremount, West Virginia."

The investigation was held May 19, 1980, after several postponements. Subsequent to the **investigation**, the Carrier dismissed the Claimant. The Carrier ● rgoes that the **investigation** clearly established that the Claimant refused to **comply** with orders of a for-to **assist in replacing a new rail being worked** mbythe Claimant's crew. The **testimony** cited by the Carrier includes an admission by the Claimant that he refused to obey the orders.

The Organization contends that the Claimant's refusal to assist in lifting the rail was justified because he perceived an immediate danger to himself. The Claimant testified that after the first attempt to move the rail, he refused to make a second attempt due to "safety precautions". The Organization also argues that the for-, did not instruct or insist that the Claimant remain on duty but clearly presented an option to him to comply or leave. In view of the nature of the foreman's instructions, the Claimant was left with the impression that he could freely exercise his own judgment and preference in the situation. In this respect, the Organization suggests that the Claimant cannot be considered insubordinate.

In reviewing the record, it is the Board's conclusion that there is substantial evidence to support the Carrier's decision. There is no basis for the Organization's "safety" defense or their contention that the nature of the foreman's directive excuses the Claimant's behavior. In respect to the "safety" contention, the Board has recognized in the past that a "safety exception" does

exist to the general "comply now, **grieve** later" rule **which** governs acts of insubordination. The "safety exception" excuses employes from **compliance** with orders where there is a reasonable belief that at the **time** of the order that **compliance** would injure **life** or limb. However, **in** this case, the Claimant **having** invoked this defense **has** not sustained the burden of proof of showing that there was a **reasonable** basis for his refusal in respect to safety considerations. **There** is abundant **testimony in** the record that showed that **moving** the rail **in** question **in** the **manner** prescribed by the foreman was standard practice. There is no evidence of special **circumstances** or facts which would have made this standard practice dangerous.

In respect to the **Organization's** position relating to the **nature** of the foreman's directive, **we** note Third Division Award No. 22763 **which** held that such a **directive** does **not** preclude a **finding** of insubordination. It was stated in the Award as follows:

"We are inclined to agree with the Carrier that the **work** site is certainly-not the appropriate place to conduct a debate, and that when a reference is **made** to either perform work or '**go home**', the latter alternative is not understood to be a freely given basis to 'take the day off'."

In respect to the quantum of discipline, this Board has held many times that insubordination of this **nature** is **grounds** for dismissal. **As** it was stated in Third Division Award 21059:

"The rule of **thumb** here is, 'Work **now**, grieve later.' The work place is **not** a debating society, where **employees may** challenge the **orders of management through** insubordinate action. Whenever **employees** refuse to follow a proper order of **supervision**, the Carrier is placed **in a position** where it **must immediately take** steps to eliminate such insubordination, or else the **insubordination** will create havoc throughout the work gang. Consequently, it is well established that dismissal is **not inappropriate in cases of** insubordination. (Awards 20770, 20769, 20651, 20102, 18563, 18128, 17153, 16948, 16704, 16347, 16286, 16074, 15828, 14273, and 14067)."

It is noted **that** the Claimant is a relatively **short-time** employe and that there are **no compelling mitigating circumstances** that serve to move us to **give him** another chance.

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

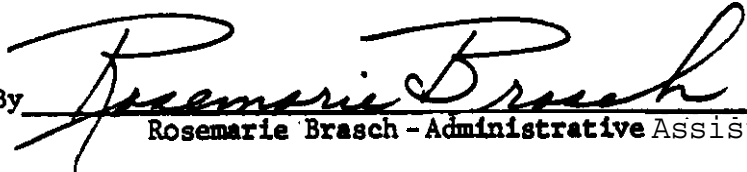
That the Agreement was not violated.

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 April 1983.