

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24457
Docket Number MW-24556

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: {Brotherhood of Maintenance of Way Employes
{Seaboard System Railroad

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

(1) **The disciplinary** demotion of **Machine Operator J. D. Davis**, his disqualification as **machine operator and** the ten (10) days of suspension imposed **upon him** for alleged '**insubordination**' was arbitrary, **capricious, unwarranted** and on the basis of unproven **charges** (System File C-4(13)-JD/12-39(80-71) G2).

(2) Mr. J. D. Davis be reinstated as a machine operator with seniority as such unimpaired, his record be cleared, he be paid for all time lost and be paid the difference between what he should have been paid at the machine operator% rate and what he was paid in a lower rated position until he is returned to work as a machine operator with seniority as such unimpaired."

OPINION OF BOARD: By letter dated July 15, 1980 Claimant, James Davis, received notice to attend hearing on July 17, 1980. He was charged with insubordination for alleged violation of instructions on July 14, 1980 while operating ballast regulator, BR 43, assigned to Force 9227. After postponement, hearing was held on July 22, 1980 after which Claimant received, by letter dated July 31, 1980, notice of discipline which included a fifteen (15) calendar day actual suspension (*) and disqualification as machine operator on all roadway machines.

The record before the Board shows that **Claimant** was instructed by foreman **M.Guthrie** to watch out for wires which controlled street crossing signals while he was operating a **ballast** regulator at **Talladega**, Alabama on July 14, 1980. Prior to starting the plowing operation **Claimant** testified at the hearing that he got off **the machine** and **made** a visual inspection for wires and after seeing none he proceeded with the **plowing** operation at the crossing. On the third pass **the ballast regulator** ripped out the wires controlling the street crossing signals.

(*) There is a discrepancy in the record before the Board in **State-ment** of Claim, on the one hand, **and Carrier** letter dated July 31, 1980 assessing discipline, on the other. The f-r states that **Claimant** received a ten (10) day suspension **and** the latter that **Claimant was** to receive a fifteen (15) day suspension.

Organization contention is that claim should be sustained on grounds that Claimant did not commit an act of insubordination in violation of Carrier Safety Rule 18 since he was told to be on the lookout for signal wires and that he obeyed this order by getting off the equipment he was operating and by making the visual inspection noted above. While it is true that there is no evidence whatsoever to suggest that Claimant defiantly refused to obey a command in the spirit, for example, of prior Board Awards 4449, 10538 or 21564 (Third Division) cited by the Organization, this alone does not warrant conclusion that Claimant may not have acted insubordinately. Insubordination is also possible through neglect or through the careless operation of machinery, particularly so when an employee is specifically advised, at a given time, on a given job, to exercise care and caution. Nowhere in the record can the Board find evidence of a specific order to the Claimant to get off his equipment and make a visual inspection of the site he was to plow. What the record does say, however, which is unrebutted by Claimant, is that he was told to be on the lookout for signal wires and to use caution and not cut the wires while operating the ballast regulator. Claimant insubordination stems from not obeying this more general order as the ultimate cutting of the signal wires, which is not in dispute in the case, substantiates. Both the Carrier and the Organization present considerable argumentation in the record before the Board regarding the visibility or non-visibility of the signal wires which were cut, as well as information on whether the signal wires were installed according to specifications or not at the location in question. All such lines of reasoning take on lesser importance in the more general context of Claimant's foreknowledge that signal wires did exist at the location in question, irrespective of where they were exactly located, and that Claimant had been specifically cautioned and forewarned to that effect. The record shows, therefore, that there is sufficient substantial evidence of probative value to warrant conclusion that Claimant is guilty as charged.

With respect to the quantum of discipline the Board has ruled many times in the past that the role of discipline is not only punitive but that it should also provide corrective and training measures (Second Division Award 6485 and Third Division Awards 5372 and 19037 inter alia). The assessment by Carrier of a fifteen (15) calendar day actual suspension represents a reasonable application of this principle. The Board has also gone on record numerous times to the effect that past record can reasonably be used when assessing discipline (Second Division Award 6632 and Third Division Award 23508). Likewise, the Board has held, in a variety of contexts, that the Carrier is in the best position to "determine the fitness and ability of an employee for a particular position" (Third Division Award 20724). The record before the Board indisputably shows that Claimant has a history of carelessness while operating various pieces of equipment for the Carrier. Since this is so, Carrier assessment of disqualification to operate Carrier equipment is neither unreasonable nor capricious and this discipline will not be disturbed by the Board.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

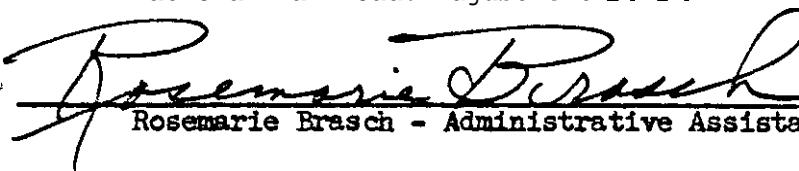
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of **Third** Division

ATTEST: **Acting Executive** Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of June 1983.