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NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **24501**
Docket Number **MW-24557**

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance of Way Employees**
(Seaboard Coast Line Railroad Company

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

(1) The thirty (30) **days** of suspension imposed upon **Trackman** L. R. **Chapman** for alleged **violation** of '**Rule 18**' on August **13, 1980** was without just and sufficient cause and on the basis of unproven charges. (System File **37-SCL-80-125/12-39 (80-72) G**).

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

OPINION OF BOARD: The **claimant**, an employee of about eight (8) months service with the **Carrier**, was working on August **13, 1980** as a **trackman** engaged **in** transporting a portable supply car while the crew was relaying a switching lead at **North Collier** near Petersburg, **Virginia**.

The Claimant was directed to dismantle the car **into** its two pieces and **to** move it over the distance where the rail was to be matched. He complied with this order with respect **to** one-half the car but declined to do so with regard to the other half.

The **Claimant** asserts that his failure to obey this order is attributable **to** a back injury **which** he sustained **while** lifting the **first** half of the car and his natural disinclination to risk further injury.

The Carrier's representative, **Roadmaster W. L. Farless**, testified that the Claimant had moved the second half of the car a short distance, thrown it down and then walked away, allegedly to seek help **in** moving and reassembling the car. **Farless testified further** that, "I said it was a Nolan one ~~man~~ supply car and It was designed for one man to transport and take apart **and** put back together and he was to pick it back up and carry it the rest of the way the other 10 feet and put it back on the tracks . . . He continued to walk . . ."

Farless continued his testimony to say that after calling **ES** witness James Green, an Apprentice Foreman, he repeated his order, at which time the **Claimant** answered "**I'm not going to do it.**" Asked, "**Leland** are you refusing to work." He said '**I am refusing to work**'.

Farless testified under questioning by R. L. Dean, Conducting Officer,

"Q. Mdhe say anything then about having a hurt back and needing assistance?

A. No sir he didn't

Q. Did he at anytime prior to the time that Mr. Green got there say anything about having hurt his back?

A. No sir he did not.

Q. Mr. Green was standing there. Would you tell us again what his words were as far as hurting his back?"

A. After I told him I was going to take him out of service and we was to go over to the yard office I asked him why he would not move the push car and he said I might hurt my back.

Q. Did you take this to mean that he had already hurt his back or he might hurt it if he picked the second half up?

A. That he might hurt it if he picked the second half up.

Q. And will you repeat again what was said between Mr. Chapman and you on the way to the yard office?

A. Yes sir he said you can shut your g-d d---n mouth since you are nothing more than a Roadmaster."

Apprentice Foreman Green's testimony corroborates Roadmaster Farless with respect to the claimant Chapman's refusal but not for the reason given: ". . . Mr. Farless called me for a witness for him. He asked Mr. Chapman to put 1/2 of push car and he told him he wont' going to do it.

Q. By him you mean Mr. Chapman told Mr. Farless that he wasn't going to do it?

A. I turn and ask him do you know what you are doing by not putting it on and he said yea. Mr. Farless told him he was going to take him out of service and at that time Mr. Farless ask him why won't he going to put it on. He say he believe he might have hurt his back and that was all. . . .

Q. Did you take that to mean that he might have already hurt his back or he might hurt it if he picked the car up and moved it?

"A. I really **didn't think** about it. I **thought** he **might** hurt it when he moved the other piece or **part** of it, or whatever. I wasn't up there at the **time** but that is what I though **have** meant."

Mr. Chapman, on his **own** behalf, testified **that**, "I twisted or pull **something** in my **back** and that's when I dropped the dolly car and ask Mr. **Farless** if I could get **some** help to pick up or carry the dolly **car** the rest of **the way** because I thought I **hurt** my back. . ."

"Q. When you and Mr. **Farless** left from where Mr. Green was and started walking up to Collier yard what conversation did you have with Mr. **Farless** then"

A. None whatsoever . . ."

From the above testimony there is adduced clear, **convincing** and **probative** evidence that the Claimant did refuse to obey a direct order.

There is a **credibility** question involved as **to** whether the Claimant indicated that he had actually **injured his** back or if he **claimed that he "might hurt his back"**, **lifting** the second piece of the car and thus mitigate **his** refusal. **This question** has been resolved to the satisfaction of the hearing officer against the **claimant** and it is not for this Board to **rule** on credibility questions nor to substitute its **judgment** for that of the hearing officer **in this regard**.

Moreover the same principle **applies** with respect to the evidence of the **Claimant's** use of profane, abusive and insubordinate language.

Insubordinate actions **and language** are **serious** offenses for which dismissal is not an excessive **penalty**. In this case a thirty (30) **day** suspension **is** not **unduly** harsh or unreasonable and thus the **Board** finds no basis to overturn the **Carrier's** action.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.

