

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24522
Locket Number MW-24401

Herbert L. Marx, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

(1) The five (5) calendar days of suspension imposed upon Repairman Paul **Spoljaric** for alleged **insubordination on August 23, 1979** was without just and sufficient cause and on the basis of unproven charges (**System** Locket 5451.

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

OPINION OF BOARD: Following an investigative hearing conducted in a fair and proper **manner**, the Claimant was subject to a five day disciplinary suspension for **"failure** to comply with instructions* given to him by an Assistant Supervisor. Claimant, a Repairman, was **working** with another **employee**, a Welder, in the repair of a ballast regulator.

While the Claimant was engaged in such **work**, he was instructed by an Assistant Supervisor to leave this **work** to drive a truck to obtain fuel to enable the Welder to continue his **work**. The Assistant Supervisor did not instruct the Welder to stop **work**.

The Claimant refused to obey the order and, in the words of the Assistant Supervisor quoting him, the Claimant "Said as long as there's a welder out here I have to **be out** here with him...". The **Carrier** alleges that the Claimant, in his refusal to obey, may have had other motives than his concern for being with the welder.

The fact remains, **however**, that the issue of safety was clearly present.

Insubordination, expressed frequently as the refusal to obey an order from proper authority, is a serious matter. Charges for such, when proven, **properly** result in severe disciplinary action. In this instance, however, one of the classic exceptions is involved -- the safety of the **employee** involved or that of another employee. There was a legitimate concern on **the part of** the Claimant in reference to the hazard of the repair **work** then in progress which, as he forcefully explained to the Assistant Supervisor, required two **employees** for proper safe operation.

The Board does not perceive a hard-headed refusal to obey an order. Under the particular **circumstances** involved here, the principle of concern for employe safety must take precedence over another principle of obeying first and **grieving** later.



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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

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

