

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24561
Docket Number MW-24691

William S. Coleman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of way Employes
(Fort Worth and Denver Railway Company

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

(1) The fifteen (15) days of suspension imposed upon Ms. T. L. Roberts for alleged insubordination on April 20, 1981 was arbitrary, without just and sufficient cause, unwarranted and on the basis of unproven charges (System File F-17-81).

(2) The claimant's record shall be cleared of the charge leveled against her and she shall be compensated for all wage loss suffered."

OPINION OF BOARD: The record discloses that the Claimant employed as a section laborer was assessed fifteen (15) days suspension for alleged insubordination. A hearing was held on April 30, 1981 and that hearing is a part of the record. A review of the record discloses that the Claimant failed to follow the specific orders of her foreman to pick ballast from the end of ties and instead chose to perform other duties. The Claimant contended that a recent miscarried pregnancy prevented her from using a pick because it hurt her to do so. The Board contends that employes cannot choose which work they will or will not perform. and further, that refusal to perform work as directed is insubordination.

The Claimant's argument of her miscarriage causing her pain is somewhat mitigating, but not sufficient excuse to choose which duties she would or could perform. The Claimant chose not to take a sick day and instead opted to work limited duty in direct conflict with the foreman's direction to do otherwise.

The discipline assessed of fifteen (15) days however, is more severe than required to impress upon this and other employes that work must be performed as directed. Discipline is reduced to ten (10) days suspension.

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 discipline was excessive.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1983

