

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24809
Docket Number SG-24671

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

On behalf of Assistant Signalman R. B. Sawyer, assigned to System Gang #3, for all pay lost account being suspended for 45 days after an investigation was held September 16, 1981, in Chattanooga, Tennessee, account being charged with refusing to follow written instructions concerning the use of hard hats, and that his record be cleared." (General Chairman file: SR-253. Carrier file: SG-521)

OPINION OF BOARD: An investigation was held on September 16, 1981 to determine whether Claimant refused to wear Carrier's approved safety hard hat, despite prior oral and written instructions. Based on the investigative record, Claimant was found guilty of the asserted specifications and assessed a forty five (45) day suspension, effective October 12, 1981. This disposition was appealed in accordance with the applicable provisions of the Controlling Agreement.

In defense of his petition, Claimant contends that he complied with Signal Foreman Sitton's instructions to wear the authorized yellow colored hard hat after Mr. Sitton told him that he would be investigated if he refused to wear it. He asserts that he was informed of this contingent discipline on August 5, 1981 at approximately 10:00 or 10:30 A.M. and considered Mr. Sitton's statements as a conditional admonition. He argues that Carrier has not proven that he refused any instructions and avers that he promptly complied with the instructions. Moreover, contrary to Carrier's assertions that he was warned by Mr. Sitton on August 4, 1981, he contends that he was instructed to wear the authorized hard hat on August 5, 1981. He further maintains that Carrier had not called two additional employees who were present at the incident to testify at the hearings, which by definition, affected his due process rights.

Carrier contends that he was disciplined for just cause since he was wearing an unauthorized hat on August 4 and part of the morning of August 5, 1981. It asserts that he was mindful of the formal written instructions governing the wearing of safety equipment, and in particular, was pointedly advised on August 4, 1981 to wear the prescribed authorized hard hat. Signal Foreman Sitton testified at the September 16, 1981 investigation that he told Claimant on August 4, 1981 to wear the proper hat, but Claimant disregarded his instructions and worked the rest of the day wearing the baseball batter's hat. Mr. Sitton further testified that Claimant reported to work on August 5, 1981 wearing the unauthorized hat and did not remove it and wear the authorized hard hat until after about 10:30 A.M. when he was apprised that he would be investigated. Carrier maintains that he was clearly directed to wear the

proper hard hat, but he refused to comply with his supervisor's instructions. It argues that the record evidence fully supports the proffered charges and contends that Claimant was afforded every reasonable opportunity to prepare a thoughtful and competent defense. It asserts that Claimant was not barred from calling the two other employees to testify at the hearing, but notes that he never requested their presence before or during the investigation. It avers that Claimant had ample time to request these witnesses if he believed they had anything pertinent to add at the investigation.

In our review of this case, we concur with Carrier's position. Careful analysis of the investigative transcript, particularly the testimony of Signal Foreman Sitton, Leading Signalman E. M. Todd and Signalman J. Petree shows that Claimant was unmistakably instructed to wear the authorized hard hat on the afternoon of August 4, 1981 and he refused to comply with Signal Foreman Sitton's instructions. He also showed his disregard for these oral instructions and Carrier's formal written instructions regarding the wearing of appropriate safety equipment when he reported to work on August 5, 1981 wearing the improper hat and working with it on until Signal Foreman Sitton again admonished him. This was about 10:30 A.M.

We have no evidence that would contradict the corroborative versions provided by these other employees nor any indication that Claimant was not unequivocally directed to wear the proper hat. Leading Signalman E. M. Todd testified that he heard Signal Foreman Sitton direct Claimant on August 4, 1981 to wear the prescribed safety hard hat and Signalmen Petree's testimony confirmed that this instruction was issued. The record is bereft of any confirmatory evidence that Claimant was first told to remove the unauthorized hat on August 5, 1981 or any persuasive indication that Signal Foreman Sitton's instructions was unclear and ambiguous. Claimant was instructed more than once to wear the authorized yellow colored hard hat and he had more than sufficient time to comply. When he reported to work on August 5, 1981 wearing the baseball batter's hat his actions, by any standard of measurement, represented a blatant refusal to obey his supervisor's instructions. This is plainly unacceptable conduct.

Furthermore, from Claimant's perspective he might have been under the assumption that once he removed the improper hat all would be forgiven, but Carrier was not barred from initiating an investigation. Having chosen to disregard a reasonable instruction, he was subject to disciplinary action. The evidence shows that he was guilty of the cited specification and in view of his past disciplinary record, the forty five (45) day suspension was neither unreasonable nor an abuse of managerial discretion.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 April, 1984