

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24851  
Docket Number MW-24948

John E. Cloney, Referee

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

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

(1) The ninety (90) days of suspension imposed upon Trackman J. B. Stephens for alleged insubordination on April 1, 1981 was arbitrary, without just and sufficient cause, unwarranted and on the basis of unproven charges (System File C-4(13)-JBS/12-39(81-37) G).

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

OPINION OF BOARD: Claimant J. B. Stephens has been employed as a Trackman by the Carrier since November 11, 1974. He was assigned to Gang 9071 which was engaged in replacing cross ties in a road crossing on April 1, 1981. During the course of this work claimant contended he and another trackman were working too close together in driving ties on parallel rails and consequently were in danger of striking one another with their mauls. Claimant asked Foreman Williams if either he or the other trackman could wait until the other moved out of range. The Carrier contends the rail had begun to buckle because of a temperature change so that it was important it be spiked down immediately. The foreman, who has had twenty-five years of track work experience considered the operation safe and instructed claimant to continue. Claimant became argumentative and the foreman took him out of service. After a formal hearing on April 13, 1981 Claimant was suspended for 90 days from April 27 to July 25, 1981. He was returned to service after serving 64 days of the suspension. Claimant's record shows he received eight warnings for violation of Rule 17-b and in 1979 he received a 10 day suspension for violation of 17-b and "unbecoming and uncivil conduct".

This Board is of the opinion there was substantial evidence developed at the hearing to establish Foreman Williams considered the method employed to perform the work was safe. The Board is cognizant of claimant's unsatisfactory past record. Insubordination cannot be condoned. This case however is complicated by the fact that claimant's conduct was based upon a fear for his safety which may not have been entirely unreasonable.

In these circumstances this Board considers a 90 day suspension excessive and we will order it reduced to 45 days.

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 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

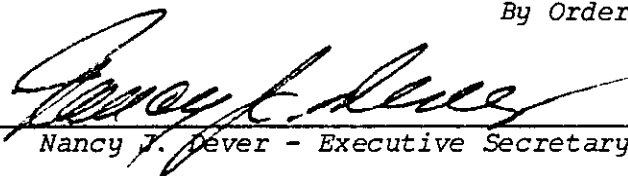
That the discipline was excessive.

A W A R D

Claim is 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 28th day of June, 1984