

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25015
Docket Number MW-24711

Ida Klaus, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

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

(1) The twenty-two (22) days of suspension imposed upon Truck Operator J. J. Wilson for alleged insubordination on May 14, 1981 was without just and sufficient cause and on the basis of unproven charges (System File TRRA 1981-10).

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

OPINION OF BOARD: The 22 day suspension of the Claimant for insubordination toward his foreman on May 14, 1981, is protested on the ground that the Carrier has failed to prove the charge.

It is clear from the Claimant's testimony that he was twice directed to go out and start his assignment for the day and that he twice refused. **He sat** in the **foreman's office**, insisting that he wanted the truck brought over to him so that he could avoid stepping into deep water. He did comply belatedly.

The evidence plainly suggests that the Claimant's negative attitude was caused by the factually incorrect criticism leveled at him by the **foreman** about being irresponsible in putting away his work tools. That remark brought on a heated exchange between them and some disrespectful and angry remarks from the Claimant. The Board does not, however, see in those remarks any threat to the foreman.

The Board concludes that the weight of the evidence supports the charge of insubordination. We find, however, that the penalty was excessive in view of the foreman's part in bringing about **the Claimant's** misconduct. We consider that a reasonable penalty in the circumstances is a reduced suspension from the 22 days assessed to 11 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 **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

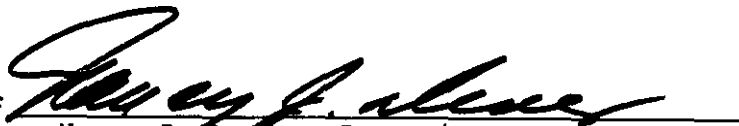
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL **RAILROAD** ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.