

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25076
Docket Number SG-25251

George S. Roukis, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE:

(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

System Docket 1753

Appeal fifteen-day suspension (August 14 through September 3, 1981) assessed J. L. Kopp by notice dated August 31, 1981.

OPINION OF BOARD: An investigation was held on August 27, 1981 to determine whether Claimant violated Paragraph 3 of Rule D of the Rules of the Transportation Department of the Consolidated Rail Corporation. The alleged violation occurred on August 13, 1981. Based upon the investigative record, Carrier found Claimant guilty of the asserted specification and suspended him from service for fifteen (15) days. Claimant requested an appeals hearing on September 9, 1981 which was held on October 1, 1981; but the findings and penalty disposition were not modified or reversed by Carrier.

Essentially Claimant was charged with failure to comply with a supervisory order given on August 13, 1981 by Assistant Supervisor E. J. Paalman. It is Carrier's position that when Mr. Paalman told Claimant at about 4:10 P.M. to perform work at the Nichols Interlocker, Claimant responded that he would not do so and hung up the phone.

Initially, Claimant had apprised Assistant Supervisor Paalman at about 3:00 P.M. that the Nichols Interlocker was out on the Grand Trunk. Claimant testified at the investigative hearing that he told Mr. Paalman that he would be unable to work past his normal quitting time at 4:00 P.M., but it was his belief that Signal Maintainer R. Strunk would remain beyond 4:00 P.M. to perform the work. He stated that when he was finally able to contact Mr. Paalman at 4:10 P.M., despite several previous unsuccessful attempts between 3:30 P.M. and 4:10 P.M. to inform Mr. Paalman that Mr. Strunk would not be able to work, he was told that "one of us", meaning either Mr. Strunk or Claimant, had to perform it. The record shows that Claimant testified on August 27, 1981 that when he told Mr. Paalman that he could not do it and additionally noted that if Mr. Paalman had not tied up the phone, it would have been possible to find someone else to perform the work. Claimant stated that he was not given any further instructions and said "good-bye".

Moreover, in appealing Carrier's decision, Claimant further argues that several procedural errors were present, including transcription inaccuracies, due process violation, lack of charge specificity, and the failure of the Manager of Labor Relations to respond within 14 days of the October 1, 1981 appeals hearing.

Carrier disputes these contentions and asserts that he acknowledged at the end of the investigation that he received a fair and impartial hearing. It avers that his behavior was unmistakably insubordinate and violative of the cited rule. Assistant Supervisor Paalman testified that when he told Claimant to **"stay there"** until he could get someone to relieve him, Claimant retorted, **"I am not going to"**, and hung up.

In our **review** of this case, we find no evidence of any procedural irregularities or any implicit indication that Claimant's contracted for due process rights were violated. The investigative hearing was properly held in accordance with normative administrative hearing standards, and Claimant was given every opportunity to prepare and conduct a thoughtful defense. With respect to the charge that Claimant violated Paragraph 3 of Rule D of the Transportation Department of the Consolidated Rail Corporation, the evidence is clear that he was insubordinate. Our analysis of the testimonial versions of the **4:10 P.M.** telephone conversation between Assistant Supervisor Paalman and Claimant on August 13, 1981 shows that Claimant was told to perform the work which is corroborated by the testimony of Construction Supervisor D. Niemiec. Mr. Niemiec testified that he heard Mr. Paalman tell Claimant to do the work, but he noted that Mr. Paalman did not say it was a direct order. On this point, while we agree that a direct, peremptory either/or order was not given at that time, there is no ambiguity in the dialogue that would permit us to conclude that compliance rested solely with Claimant. The Assistant Supervisor's instruction was not a discretionary request that was left to Claimant's interpretation, but a clear supervisory directive. A problem existed that required his technical efforts. By not implementing this order, Claimant was plainly insubordinate and it is unacceptable conduct. In the railroad industry, which is vested with a vital public interest, it would ill behoove **the** public trust if **employes** were free to disregard supervisory instructions. Assistant Supervisor Paalman's instruction was not unreasonable under the present circumstances, and Claimant's refusal to comply with it constituted a serious disciplinary infraction.

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 12, 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. Lever*
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 4th day of October 1984.

