

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD** DIVISION

Award Number 25095  
Docket Number NW-24738

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 fifteen (15) days of suspension imposed upon Track Laborer W. G. **Kaucher** for alleged insubordination on May 19, 1981 was without just and sufficient cause and on the basis of unproven charges (System File TRRA 1981-U).

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

OPINION OF BOARD: The charge of insubordination on which the Claimant was assessed the **15-day** suspension here under protest was based on a brief occurrence that took place on the morning of May 19, 1981.

The Claimant, a track laborer, and other members of his gang, with the permission of their foreman, took shelter against the rain in their crew truck. The foreman went off to work with a burro crane. As the rain subsided, the foreman came toward the crew and instructed them to leave the truck. To which, the Claimant responded that it was raining, and he closed the cab window. At that, the foreman told the Claimant he would be out of service if he refused to leave. The crew then left, the Claimant being one of the last two to do so. As the Claimant walked with the others toward their assigned job site, the foreman informed him that he was out of service. The Claimant thereupon departed the premises without argument or other response.

The charge of insubordination, as explained in the foreman's testimony, centers on the attitude he believed was reflected in the Claimant's response that it was raining and his simultaneous closing of the truck window. To the foreman, those acts meant that the Claimant simply pretended not to hear the directive and that he was in fact 'instigating to get everybody to stay in the truck'.

The Claimant's explanation of the two crucial acts is that he could not hear what or to whom the foreman was talking because of the distance between them and the noise of the crane. At the same time, he said, he closed the window because it was raining.

On thorough analysis of the testimony and the entire record, the Board must conclude that the Carrier has failed in its obligation to support the charge of insubordination by substantial evidence of an acceptable **and** persuasive nature.

Although among the last to leave, the Claimant did comply with instructions. He did not refuse to work. He did not engage the foreman in any kind of discussion, and he made no abusive or defiant remarks to him. Thus, by all outward objective signs, he could not fairly be said to have been insubordinate. Looking, then at what the foreman believed to be the culpable conduct, we see no rational basis for his subjective judgment and surmise. The evidence is at best ambiguous. It affords no good **reason** for accepting the foreman's explanation against that of the Claimant.

Accordingly, the claim must be sustained.

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 agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:



Nancy & Dever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of October 1984.