

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25126
Docket Number m-25015

Edward L. **Suntrup**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Norfolk and Western Railway Company
(Former Illinois Terminal Railroad Company)

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

(1) The three (3) weeks of suspension imposed upon Truck Driver M. Callender for **"alleged** refusal to obey the order of **Foreman** Eitchcock to cut a lock off the **Roxana** Section House on September 19, 1981" was arbitrary, without just and sufficient **cause** and on the basis of unproven charges [System File ITRR (N&W) 1981-16/MW-STL-81-14].

c - (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: By letter dated September 21, 1981 the Claimant, **M. Callender**, was notified to attend an investigation on September 25, 1981 to develop **facts** and determine responsibility, if any, in connection with his alleged violation of Rules A and **H** of the Operating Rules. The Claimant was specifically charged with the alleged refusal to obey the order of his supervisor when he was asked to cut off the lock of the **Roxana** Section House on September 19, 1981. After the investigation was held as scheduled the Claimant was notified on October 2, 1981 that he had been **found** guilty as charged and that he was being assessed a three (3) week suspension.

A review of the record shows that the Claimant did not **immediately** follow an order given to him by his Track Foreman when he was asked to cut off the lock of the Section House on September 19, 1981 in order to obtain some **tools**. The record shows that the Claimant hesitated before obeying this order for a number of reasons. First of all, testimony at the hearing shows **that** the Claimant was not personally convinced that the **Foreman** had proper authority to give him this particular order. Secondly, the record **evidence** also shows that the Claimant apparently had **some** anxiety about **leaving** the **tool** shed unprotected after the lock would have been cut off. The Claimant did, however, ultimately obey the order and this **fact** is not in dispute.

The Claimant was clearly in the wrong when he refused the order in question in the manner in which he did. The proper approach would have been for the Claimant to have obeyed the order if he had considered it to be in some manner questionable and/or **unreasonable** and to have sought redress through the grievance procedure of the current **Agreement** (Third Division Awards 16286; 20030; PLB 3443, Award **17**). Unfortunately he did not do this. On the other hand, the Claimant did obey the order in question after a delay. The extenuating circumstances related to this delay, while they do not justify the **Claimant's** actions, do permit an understanding of them in a **more** reasonable light and this must be considered when assessing discipline. Given these circumstances, therefore, as well as the Claimant's prior clean record which may be taken into consideration when assessing discipline (Second Division Award 8527; Third Division Awards 22320; 235081, it **would** not be unreasonable to reduce the three (**3**) week suspension which began on September 19, 1981 to a ten (**10**) calendar day suspension beginning on that date. The Claimant shall be compensated for any other loss in **pay** which he may have incurred because of the incidents relative to the instant case at pro rata rate.

All additional information introduced into the record by the Carrier in its Submission to this Board which was not part of the record on **property** is inadmissible (Third Division Awards 20841; 21463; 22054).

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.