

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 25201
Docket Number MW-25436

James Robert **Cox**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Metro-North Commuter Railroad
(Consolidated Rail Corporation (former New York, New Haven
and **Hartford** Railroad Company))

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

(1) The dismissal of **Trackman** W. W. Snell for alleged insubordination was without just and sufficient cause (System **Docket** NH-102).

(2) The claimant shall be **reinstated with** seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: October 27, 1981 Claimant W. W. **Snell** **admittedly** refused **an order** of Assistant Supervisor of Production **Hayden** at Darien, Connecticut. **He** was removed from **service and**, following a hearing November 2, 1981, notified of his dismissal for insubordination -- refusal to perform duties as assigned.'

October 27th Mr. Snell was a member of a Tie Gang under System Supervisor of Production Hayden's direction. Snell, a **Trackman**, was instructed to use his ballast fork and brush stone away from the tie plates. **He** started this assignment going up one rail but, in order to make it possible for the spike pullers to start their job, Supervisor told him to clean up both rails as he moved forward. According to the Supervisor, Snell was given three direct orders to continue working but responded that it was not his job, the second time yelling, "**Order I ain't gonna do it**". Upon receipt of the third direct order he replied, "I ain't **gonna do it**" and threw his fork to the ground and was then relieved of duty and replaced by another **employee** who completed **Snell's** assignment. There is no evidence that there was any safety or health factor involved in **Snell's** refusal and it appears that he was qualified to perform the job, a task normally performed by one person.

Snell acknowledged that he did not do as instructed by the Supervisor and stated that he told him, "**I** can't do but one side at a **time**" and then, he says, when the Supervisor explained that both sides had to be done he continued, "**I** ain't but one man. How can I be two places at once..... iie further stated that he told the Supervisor, "**When I finish this side I'll come over and do the other side**". **He** denies throwing down the fork, instead explaining that he carried it all the way back to the Foreman.

During the two years preceding October 27, 1981 Claimant had been disciplined twice for insubordination receiving a 20-day suspension in October, 1979 and having a discharge reduced to the equivalent of a 4-month suspension in 1980.

The evidence clearly established that Claimant, despite previous discipline for insubordination, without reason three times refused a direct order his Supervisor had issued. Under these circumstances and in view of his record, particularly two substantial lost time disciplines for the same offense, it is the opinion of the Board that the claim is without merit and it is accordingly denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.

