

NATIONAL RAILROAD ALUVSTMENT BOARD

THIRD DIVISION

Award Number 25314
Docket Number MS-25364

Marty E. **Zusman**, Referee

(David Lawrence
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company
(Lake Region)

STATEMENT OF CLAIM:

"Whether Petitioner's thirty (30) minutes meal period taken with other employees on 10 June 1981 at 12:00 P.M. was contrary to Respondent's effective working agreement with said employees dated 1 February 1951 (specifically Rules #38, 39 and 40*) where the facts are as follows:

*Rule 40 reads 'Length of the meal period. **Unless** acceptable to the majority of the employees directly interested, the meal period shall not be less than thirty minutes nor more than one hour' (emphasis added)."

OPINION OF BOARD: Claimant, Mr. David Lawrence, was working as **an** Extra Gang Laborer, T-5 Tie Gang at the time of this dispute. He had been working that position just over two days and at the time of the instant case was in the vicinity of Mile Post 360, Payne, Ohio.

By letter of August 1, 1981, Claimant was assessed a ninety (90) day actual suspension. He had been found guilty of a charge of insubordination following an investigation on July 30, 1981, in which he had earlier been charged by letter of June 12, 1981, with:

"...your responsibility in connection with your being insubordinate to your supervisor, Extra Gang Foreman, **H. Stapleton**, which occurred at **12:25** p.m. June 10, 1981...in that you failed **and** refused to return to work on your **position**...after you finished your **lunch**."

As a preliminary point discrepancies found in the record between the materials presented on property and those presented to the Board by either party in their Submissions have been dealt with here by treating the latter as inadmissible. **During** the handling of this case on property issues **were** raised as to manner in which the case was processed **and** as to the fairness of due process. After a complete and thorough review of the issues raised, this Board can find nothing that would be of such gravity to undermine the Claimant's rights. Claimant had more than sufficient time to prepare **a** defense as multiple postponements occurred. He was aware of the charges against him **and** was well-represented in **the** case. A review of the questioning **and** the conduct of the investigation leads to the determination that it was not procedurally deficient.

As to the charge of insubordination for which the Claimant was found guilty and given a ninety (90) day actual suspension, there is no question as to his guilt. When the Claimant was asked if he followed the instructions of his Supervisors in returning to work he responded, "I did not follow to go back when they said, but I did go back. Not when they said, **no**". While much is made of the reasons for Claimant's refusal to follow direct orders, such arguments are not germane to the issue at bar. The charge is insubordination and there is no support for the Claimant's right to such authority as to decide how long a lunch break to complete before returning to work. Even if the Supervisor was totally without Agreement support for his actions, Claimant was obligated to obey ROW and grieve later. Claimant chose to take it upon himself to determine the end of his break. In refusing a direct order from his Supervisor he engaged in behavior which could not be tolerated or ignored by Carrier, because of the most serious implications it has to the maintenance of order. As such, Carrier's decision to suspend rather than dismiss cannot be considered excessive in view of the facts before this Board. Insubordination has often resulted in dismissal (Third Division Awards 21059, 20770, 20651). As such, this Board denies the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Deyer - Executive Secretary

Dated at Chicago, Illinois, **this** 28th day **of** February 1985.