

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number '25435
Docket Number W-25307

Herbert L. Marx, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Seaboard System Railroad

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

(1) The ten (10) calendar days of suspension imposed upon Bridge **Helper** W. F. Jordan for alleged violation of 'Rule 18' on **December** 9, 1981 was without just and reasonable **cause** [System File C-4(13)-WFJ/12-39 (82-1103)].

(2) The claimant's record shall be cleared of the charge leveled against him, he shall **be compensated** for all **wage** loss suffered, including wage loss suffered attending the hearing, and he shall **be** reimbursed for all expenses incurred by him while attending said hearing.

OPINION OF BOARD: Claimant was subject to an investigative hearing on two separate notices of charges. By agreement, both notices of **charge were** heard in a single investigation. The first charge concerned alleged **"insubordination** for failure to report for **work** following an injury. **Following** the hearing, the Carrier determined that such charge was not justified, so the Board need not be concerned with the substance of that charge.

The second charge also concerned 'insubordination. in connection with **the** Claimant's refusal to sign a copy of the letter containing the first charge. The second charge read in pertinent part as follows:

"On Wednesday, December 9, 1981, Assistant Supervisor Bridges and Buildings Ii. T. Jeffers personally delivered to you a letter charging you with two rule violations and setting up formal hearing for **same**.

Mr. Jeffers instructed you to acknowledge receipt of **the** letter after you read it by affixing your signature on a copy of the letter indicating receipt of same in which you refused to do so.

By your **refusal** to follow the reasonable instructions of Assistant Supervisor Bridges and Buildings **Mr. H. T. Jeffers** you are hereby charged with violation of that part of Rule 18 of the Safety Rules for **Engineering** and Maintenance of Way Employees that reads -- 'Insubordination' --- will subject the offender to dismissal...*

In resolution of this **matter**, it is important to consider the full text of the first charge letter which the Claimant refused to sign. It reads as follows:

● You-*re **working** as Bridge Helper on Bridge Gang 5588 on Monday, November 30, 1981, when tie dog you were using slipped Off timber hitting you on your cheek. You were taken to **Doctor Phil Rhiddlehoover** in **Hurtsboro, Ala.** who examined **you** and issued Form 40 and note **authorizing** you to return to your job. You failed to report for **work** on Tuesday, December 1 and Wednesday, **December 2, 1981.**

I went to your home on the afternoon of **December 2, 1981** and found you at home. You were reminded that the doctor had given you permission to **return to work.** I instructed you to return to your assignment immediately in which event you **u)(u 7** report back to **work** until Monday, December 7, 1981.

This is to advise that you are charged with violation of Rule 17-b of the current **working** agreement between Seaboard Coast Line Railroad and its Maintenance of Way **Employees** and that part of Rule 18 of Safety Rules for **Engineering** and **Maintenance** of Way **Employees** reads -- Insubordination -- will subject the offender to **dismissal.**

A hearing will be conducted in the Assembly **Room** of the Division Office **Building** located at 601 E. Liberty Street, Savannah, **Ga.** on Friday, **December 18, 1981** commencing at 10:00 A.M.

You will be present to answer the charges and may be represented by the duly accredited representative of the employees. You may have present any witnesses you desire. It will be your **responsibility** arrange for their presence.

Your personal record file will be subject to review in **this hearing.** "

This letter was hand delivered to the Claimant by the Assistant Supervisor, Bridges and Buildings after the Claimant had returned to **work** following his absence **owing** to the on-duty injury. While the text of the letter was read into the record of the investigative hearing, a copy of the letter itself was not made a part of the record before the Board. Thus, there is **no** basis to dispute the Organization's contention that the letter did not **include** a signature line for the addressee to **"acknowledge receipt"** of **the** letter. Rather, the Assistant **Superintendent** simply ordered the Claimant to **send one** letter.

The Claimant's reluctance to sign the letter, according to his testimony, was that in doing **so** he might be agreeing to the charge of failing to report to work the **previous** week as he had been ordered. In examination by the hearing officer, the Assistant Superintendent described the incident as follows:

'A. I called **Mr.** Jordan off -- off to the side to where my truck was parked, I had my letters and so forth in the truck and I **told** him I had some letters here, I had one for him and I had one I wanted him to read and acknowledge. It was a letter of charges and he read some of it and says **it wasn't** right, that the letter wasn't right and he **wasn't going to sign it**, he wasn't going to acknowledge it. Well, I told him I **was** instructing him to sign the letter and he **says** he wasn't going to sign because it wasn't right. Well, I told him it really don't make any difference whether its right **or** wrong, **I'm** instructing you to sign the letter. I said **if** we have a hearing **or** something, have a hearing, I said **that we can talk about that, that can be discussed in the hearing but he refused to sign -- acknowledge the letter.**"

Under examination by the Organization Representative, the Assistant Superintendent put it this way:

"A. Well, I called **Mr.** Jordan **over** to the truck as I had the letters in the truck and I told him I had a letter for him, I had his personal letter and I had a letter I wanted him to read and sign it **or** acknowledge it and when I presented it to him and gave it to him, he read it, read a little bit then he says it wasn't right and he **was** not going to sign it **or** acknowledge it.

Q. Did you get the distinct impression that **Mr.** Jordan was not **or** did not sign it because he felt the letter was wrong?

A. The reason he did not sign it?

Q. Yes.

A. Well, I really not altogether, I don't think because I told him. I tried to explain it to him that whether he thought the letter was right **or** wrong that I'm instructing him to sign it and if its a hearing or anything like that we could talk about that in the hearing but I told him that **I was instructing** him to sign the letter. And I also told him that by his refusing to sign this **or** acknowledge this letter, he could be **charged** for not following **instructions.**"

Notably lacking in the Assistant Superintendent's approach to the Claimant was the simple expedient of **saying** to the Claimant something like, 'by **giving** me your signature, all you are saying is that you have received the letter and nothing more: Instead, the message was clearly conveyed that he was to sign the letter (despite the expressed fears of the Claimant, perhaps through unfamiliarity **with** such documents) **or** be **"charged"** for not following instructions.

By refusing to do as instructed, the Claimant was, technically, insubordinate. This situation, however, is hardly of the **same** degree of insubordination as the direct refusal of a work order **or demonstrating** open disrespect to a supervisor. Whether the letter was signed by the Claimant **or** not, the investigative hearing **would** have gone forward. The Board **finds** believable the Claimant's expressed uneasiness as to the consequences of **signing** the letter.

Under these circumstances, the Board finds a disciplinary penalty unduly harsh. A reprimand **would** have had adequate effect to avoid a **repetition** of such **an** incident. If the Claimant was **at fault** in not following **instructions**, the Assistant Superintendent also was less than precise in assuring the Claimant **as to the reason** for the **signature**. **Suspension** is reduced to a reprimand and Claimant shall **be** reimbursed for the wage loss suffered from the disciplinary suspension.

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

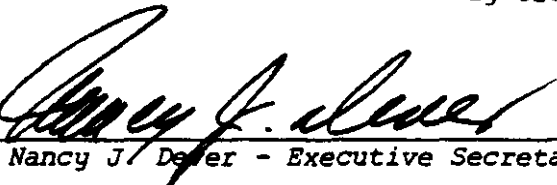
That the discipline was excessive.

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 30th day of April 1985.