

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25454
Docket Number MW-24680

Ida Klaus, Referee

(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: (

(Southern Railway System (Central of Georgia
(Railroad Company)

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

(1) The sixty (60) days of **suspension imposed upon** Laborer R. L. Jones for alleged failure **"to** follow instructions issued by your Foreman" on June 10, 1980 was excessive and without just and sufficient cause (Carrier's File MW-290).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: This claim challenges the validity of a 60-day suspension of the Claimant for alleged failure to **follow** his foreman's orders.

On June 10, 1980, the Claimant was **working** as a Laborer with Tie Patch Gang Number 2. As work was beginning, the **Foreman** instructed him to assist another **Employee** in greasing his machine. Some two or three minutes later the Foreman saw ~~that~~ the Claimant had not yet gone to carry out his **instructio** and assigned another **Employee** to the job. As a result of this, a brief verbal altercation took place between **the** Foreman and the Claimant after which **the** Foreman instructed the Claimant to get 50 spikes from the pile. The Claimant did not follow the instruction and remarked that this was a trivial job. He walked away **from** the **Foreman** in a direction opposite that of the spike pile. The Foreman became angry and called the Claimant **"boy"**, to which the Claimant replied, **"Don't call me boy"**. The Claimant **performed** neither job.

The Carrier argues that the failure to **obey** the Foreman was willful. It notes that neither instruction was carried out and that the Claimant criticized the Foreman's second instruction. In assessing the 60 day suspension, the Carrier states that it took into account a prior five day suspension imposed on the Claimant in 1979 for refusing to work.

The Organization contends that the Claimant never actually refused to perform the **work**; it asserts that he was prevented from doing so by the Foreman, who singled the Claimant out for harassment and discrimination and provoked an argument with him. It stressed particularly the Foreman's use of the word 'boy'. The Organization also maintains that the introduction into the investigation of the Claimant's alleged past record prevented an impartial and fair determination.

Upon careful review of the record, the Board concludes that the charge is supported by substantial credible evidence. The record establishes that the Claimant simply refused to perform the jobs given to him and that no extenuating circumstances existed to excuse his failure to follow instructions. The Claimant showed no disposition to perform work assigned to him. He made no move to begin any work for the day. He criticized his assignment and refused to perform it. There is no evidence to support the Organization's argument that the Claimant was being harassed or discriminated against. While the foreman's use of the term "boy" is inexcusable, there is no evidence that the Claimant was more than momentarily deterred by the use of that word or that he refused to carry out the instructions because of it.

Failure to obey instructions is a serious offense. It subverts the Carrier's ability to manage its operations. In light of the seriousness of the offense, the Claimant's prior suspension, and the absence of any factors mitigating the offensive behavior, we cannot find that the 60 day suspension was excessive or otherwise unreasonable.

The introduction of the Claimant's prior discipline did not render the investigation unfair. We must allow the penalty to stand.

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.