

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25548
Docket Number MW-24913

George v. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Consolidated Rail Corporation
((**Former** Penn Central Transportation Company)

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

(1) The discipline imposed upon **Trackmen M.J. Failor**, R. A. Kramer, W. D. **McGuire**, T. L. Moore, E. R. **Rhinesmith** and **J. L. Rothermel** for alleged insubordination on September 19, 1979 was without just and sufficient cause (System **Docket** Nos. 550, 551, 552, 553, 554 and 555).

(2) The claimants' records shall be cleared of the charge leveled against them and they shall be compensated for all wage loss suffered.

OPINION OF BOARD: According to the testimony at hearings on the Carrier's property, the six (6) Claimants were brought by bus to their work area on the **morning** of September 19, 1979. The Track Foreman testified that he then read the safety rule and ordered them "to throw scrap out of the **gauge**, clear the track up of scrap and throw plates at the start of the new job.* This version was corroborated by other witnesses **as** well.

The Claimants deny that the safety rule was made explicit and also deny that they were told to throw plates.

The Track Foreman **asserted** that subsequently they all left the Carrier's property for a period of up to two hours, spending that time in the adjacent clearing of a Boy Scout camp.

The Claimants do not deny Leaving the premises but indicate that it was only for a period of 45 minutes to one hour and that their reason for doing so **was** because the track was not as yet "**dead**" and they thought they had heard a train approaching. **Further** they asserted that they believed it **was** the Track Foreman's duty to locate them if he wished to give additional orders when a portion of their work was completed.

After the hearing the Claimants were penalized the "**time** served" under suspension, 37 1/2 days, for insubordination.

The Organization on behalf of the Claimants, **charge** that the suspension **was** arbitrary, capricious and unjustified. Also they **charge** that, even if discipline is warranted, the penalty is too severe for such an infraction.

In studying the transcript of the hearing the Board is convinced that the Carrier acted properly in exacting disciplinary penalties for the infraction by virtue of:

1) **Each Claimant** admitted leaving the Company premises without authorization.

2) Each also admitted spending 45 minutes or more at the Boy scout camp. **This** was clearly not on the **Carrier's** property. And forty-five (45) minutes is assuredly an inordinate **amount** of time to wait for an approaching train to make its presence known, even if the Claimants' story is to be believed.

3) It is not for the Board to resolve conflicting **testimony** regarding whether or not an order was given to throw plates.

4) **Employees**, while **"on the clock"**, are required to be readily available for assignment to duties. It is not a reasonable interpretation to require that supervisors **search** for their presence to-pass along orders otherwise the **employees** might **"make themselves scarce"** at every opportunity while being paid for nonperformance of any work.

5) "Insubordination" does not require an overt rebellious act or verbal refusal to obey orders to qualify under that definition. It is sufficient that an **employee** fail to carry out a proper instruction or fail to accept the legitimate authority to which **he** is subject.

The testimony of the Foreman. other Carrier witnesses and the Claimants themselves reveals this to be the case in the mattes at question. There is no doubt that the miscreants were disrespectful and defiant of authority in absenting themselves, for whatever period of time, without permission, from their assignments and from their place of employment.

With respect to the severity of the penalty, the **Board** finds scant reason to reduce it and ample evidence to justify it. Despite the Organization's plea of "mitigating circumstances", the Board believes that corrective discipline is certainly warranted in view of the attitudes and actions to which the parties testified:

1) "Galitskie: . . .I told them to yet out of the bus. They said, 'What's the matter with the green bus? How **come** they aren't **out?**' I said that I was the foreman on this bus. The **green** bus has their own foreman, so about nine or ten fellows **got** out, the rest hesitated so I got in the driver' seat to take their names and they **got** out...."

2) **"Failor:** Mr. Galitskie, didn't I ask you other days why it was always us getting this?

Galitskie: The day before you did ask why we were throwing plates.

Failor: LB you remember your response to me asking why some people could yet off?

Galitskie: If they went off and I caught them, I reported them."

3) 'Woods: Mr. Hull, on Wednesday, September 19, 1979, at approximately 7 AM, were you present on a bus on which Mr. E. J. Galitskie. known as 'Meatball' was the Foreman?"

4) "Woods: When you became aware of the fact that there were men off railroad property, why did you not go down and approach them?

Galitskie: Because I thought they would grab ahoid of me.

Woods: When you say, 'grab ahoid of me', are you referring to physical abuse?

Glitskie: Yes sir."

5) "Failor: . . . When we got there, Mr. Galitskie stood up. He started to say the safety rule, but it ended up sounding like a joke about the safety rule. You heard the usual bickering and arguing on the bus...."

6) "Woods: Why didn't you go after these employees to bring them back upon the track?

Gidaro: They shouldn't have been off the railroad. They are on company tim. I was afraid of being bodily harmed.

woods: Did you give Mr. Galitskie any instructions with reference to getting the men back up over the bank on their going over the hill?

Gidaro: I told him not to go over the bank.

Woods: For what reason?

Gidam: For his safety."

Based upon the record of this and other testimony it is abundantly clear that the **Carrier** needed to take corrective disciplinary action to prevent a continuance of this type of behavior. The **employee's** questioning of orders, "arguing and bickering", subjecting supervision to opprobrious **name** calling, threats of physical violence and intimidation, requiring Foremen to insure compliance with orders by implying disciplinary reprisal, expression of contempt for safety rules, all constitute "**circumstances**" far from "**mitigating**" the severity of the penalty. In fact, given the prevailing atmosphere and relationship which is apparent, the penalty could be judged lenient.

Thus the Board finds that the suspensions are warranted and will not disturb the penalty.

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;

This 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. Dover - Executive Secretary

Dated at Chicago, Illinois, **this** 26th day of July 1985.

