

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26246  
Docket Number MW-25964

Robert W. McAllister, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employes  
(Consolidated Rail Corporation

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

(1) The **discipline** ('time held out of service as discipline') imposed upon **Trackman R. C. Feese** for alleged insubordination on June 30, 1982 was without just and sufficient **cause** and on the basis of unproven charges (System Docket CR-51-D).

(2) The charge leveled against the claimant shall be removed from his record and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant is a **Trackman** with approximately four years of service at the time he was found guilty of refusing to obey an order and insubordination.

On June 30, 1982, the Claimant was setting spikes. According to the testimony of the Assistant Engineer of Railway Gang 101, the Claimant was taking a smoke rather than setting spikes. According to the Assistant Engineer he told the Claimant he would not take that. He said the Claimant responded, "**F** - you, I'm going." The Assistant Engineer then informed the Claimant he was out of service.

According to the Organization, the record establishes that Claimant's work was caught up and that he and two others were waiting for the hole boring machine to move ahead. The Organization contends the Claimant was not engaged in any improper conduct that was any different than the others which should have singled him out for the unprovoked berating by the Assistant Engineer and that there was some question as to who said what to whom and when it was said.

This Board has reviewed the record and finds the discipline imposed was not **commensurate** with the nature of the proven facts of this case. **Accordingly**, the Claimant's time held out of service from June 30, 1982, until August 3, 1982, is reduced to seventeen calendar days and he is to be paid for time lost between the dates of July 18, 1982 until returned to service less outside earnings, if any.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

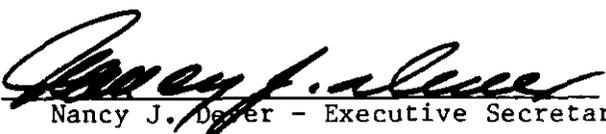
That the discipline was excessive.

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 27th day of February 1987.