

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26503
Docket Number MU-25863

Robert W. McAllister, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company

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

(1) The twelve (12) days of suspension imposed upon Equipment operator T. A. Jackson for alleged insubordination on April 22, 1983 was without just and sufficient cause and on the basis of unproven charges (System File C-D-1781/MG-4030).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant was issued a **twelve** (12) day suspension for insubordination on April 22, 1983. The Organization argues the record establishes the Claimant did comply **with** the instructions he received. It is contended by the Organization that, upon being instructed to help out at the rear, the Claimant proceeded to the rear of the gang, but was twice delayed by other employes for short periods of time. The Organization believes that, in the absence of any evidence the Claimant refused **to** follow instructions, the Carrier is basing its action on the assertion the Claimant did not **move** fast enough. The Organization claims there is no evidence the Claimant was ever instructed to **move** faster. Considering all the circumstances, the Organization insists the Carrier failed **to** establish in the record any evidentiary **basis** which supports the charges **or** justifies the discipline.

The Carrier contends that insubordination is a failure to comply with instructions from proper authority. The Carrier emphasizes that the Assistant Rail Supervisor **and** the Rail Supervisor had the authority to instruct the Claimant to proceed to the rear.

Despite the Claimant's contention he was in the act of complying, the Carrier asserts he did not say he was moving at a reasonable pace **or** **refute** the observations he was moving as slowly as possible.

The Claimant acknowledged he was instructed **to** go to the rear of the gang and was stopped twice by other employes. Given this testimony and that of Carrier witnesses, it is evident the Claimant did not promptly follow the instructions issued. The Claimant's actions were not defiant; he simply did not use good judgment in making his way to the end of the gang. Our review finds the **Carrier** has; by a preponderance of evidence, justified its determination to discipline the Claimant,

We view the amount of discipline to be excessive given the record before us. The Claimant's twelve (12) day suspension is to be reduced to a six (6) day suspension. The Claimant is to be reimbursed the difference in lost wages.

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

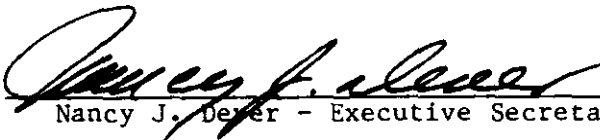
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.