

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26569

Docket Number MW-26819

Elmer F. Thias, Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Burlington Northern Railroad Company

(former St. Louis-San Francisco Railway Company)

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

1. The eight (8) working days of suspension imposed upon **Trackman** Driver **J. Hall** for alleged refusal to apply rail anchors as instructed at approximately **3:30** P.M. on April 24, 1984 was unreasonable, unwarranted and on the basis of unproven charges (System File **B-1044/EMWC 84-11-21**).

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: This dispute arises from a" incident which occurred between the Claimant, a **Trackman** Driver, and his Foreman at approximately **3:30** P.M. on April 24, 1984. Thereupon, the Foreman dismissed the Claimant from service for insubordination. That evening, the Claimant discussed the situation with the Roadmaster having jurisdiction in the territory. The Claimant was told to report for work the following morning and this the Claimant did. When the Foreman arrived before work on April 25, 1984, he found the Claimant preparing to go to work. The two of them had a short conversation and then the Foreman received a telephone call from the Roadmaster. Following that conversation, the Foreman instructed the Claimant to disregard the dismissal issued the preceding day and in its place, the Foreman issued notice of a suspension extending from April 25 to May 7, 1984. The Organization requested a" Investigation on behalf of the Claimant and the Investigation was held, after several postponements, on June 5, 1984. The charges, as formally stated and considered at the Investigation. were:

. . . your alleged refusal to apply rail anchors
as instructed by your Foreman, . . . "

The Claimant was present at the Investigation and he was represented by his Representative. The Investigation was conducted in a fair and impartial manner. The Conducting Officer examined each witness thoroughly as did the Claimant's Representative on cross-examination. Thus, the evidence was fully developed.

The Carrier upheld the 8-day suspension imposed upon the Claimant and subsequent appeals were taken and denied on the property. The dispute is now properly before this Board.

While stated in slightly different language in the formal charges set forth above, the issue before us is insubordination. This is a question of fact and it must be demonstrated on the factual evidence developed.

The record indicates that the Claimant had been working for approximately eight hours at the time of the incident here involved. The Claimant had been distributing rail anchors and he either was near completion of that task or had completed the task when the Foreman instructed him to begin applying the rail anchors. At this point the Claimant informed the Foreman that he would need a mundy mall. The Foreman instructed another member of the gang to obtain the mall for the Claimant and this was done. During the interim, the Claimant continued distributing anchors. The Claimant then informed the Foreman that he needed a drink of water. The Foreman instructed another member of the gang to go and bring back the water.

At this point the testimony of the four witnesses who testified in regard to the water diverges slightly. The Foreman and one witness indicate that the water jug was returned but both of these testified that the **Claimant** did not drink. On the other hand, the Claimant and one witness testified that the Claimant was taken out of service before the **water** jug was returned. At this point, we add that the testimony in the record indicates it was usual or customary for members of the gang to take a short break, perhaps get a drink of water, upon completion of one task and prior to taking up another. In the interim between the time a member of the gang was instructed to bring back the water jug and either his return with the jug or prior thereto, the Foreman and the Claimant were engaged in conversation. The Foreman did instruct the Claimant to apply rail anchors, the Claimant expressed **his** intention to do so but also expressed his view that he would be unhurried. Additionally, the Claimant applied no rail anchors and was removed from service by the Foreman.

We have stated what we believe are the factual particulars in a condensed version, of the incident before **us**. It should be understood, however, that this condensed version is not the equivalent of the full evidence so thoroughly developed during the Investigation. On the whole record, the Organization argues that the Claimant is not shown to have refused to apply rail anchors and that he was berated by the Foreman. On the other hand, the Carrier argues that the Claimant refused to comply with his supervisor's instructions and that he was not harassed.

The evidence does not disclose any disposition on the part of the Foreman to either berate or harass the Claimant and neither does it support the view that the Claimant simply refused to comply with his Supervisor's instructions. Further, the record contains no evidence of a willful disregard of authority by the Claimant.

The two participants involved in the incident had gotten along well together and the incident did not occur until approximately eight hours after each had started work. Both are engaged in the strenuous work required in maintaining a Carrier's rail lines and both have many years of service performing that work. Railroading is serious business and both the Claimant and the Foreman demonstrate that in the practical experience both have displayed. Both principals involved in the incident under review have many years of prior service and the evidence does not disclose a flaw in the prior record of either. From our appellant viewpoint, we see the incident as an unfortunate episode in the lives of two conscientious and dedicated individuals who are engaged in railroading; characteristics so often found in those who work in the railroad industry.

We believe the point at issue in this dispute is well illustrated in the Foreman's testimony; the second sentence of his answer to the fourth question appearing on page 12 of the Transcript. While the time frame he uses is obviously extreme, the message conveyed is appropriate:

"We can't wait all day for him to make his mind
up."

There are certain time frames contained within the record suggesting so many minutes expended in one aspect and so many expended in another aspect of the incident. Admittedly, these are approximations. We do not believe this dispute can be properly decided on the basis of a specific time. Instead, the record must be reviewed, all relevant evidence considered and a decision made from that consideration. We have done that and we find that the preponderance of the evidence supports the decision the Carrier made after the Investigation had been concluded.

In consideration of the **8-day** suspension imposed upon the Claimant, we would first point out that insubordination is a serious matter and that is particularly so in the railroad industry. More severe sanctions have been imposed in other cases, albeit the circumstances may vary. Here, both the Claimant and the Foreman discussed the circumstances of the incident with the Roadmaster and the **8-day** suspension followed these discussions. We believe the penalty to be appropriate and we do not disturb it.

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

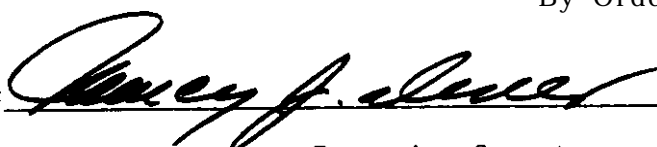
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.