

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26571
Docket Number MW-26983

Elmer F. Thias, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company (**Northern** Region)

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

(1) The ten (10) days of suspension imposed upon Track Foreman R. E. Brown for alleged insubordination for failure to comply with Assistant Track Supervisor B. L. Jewel's instructions on November 15, 1984, was arbitrary and on the basis of unproven charges (System File C-D-2670/MG-5086).

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

OPINION OF BOARD: The Carrier's Track Supervisor intended to be absent on November 15, 1984, and his plans were that the surfacing unit be operated that day to surface the last mile and one half of Carrier's Chicago Subdivision. The procedure to be followed contemplated that intervening roadway crossings be "pulled" or "removed", permitting the surfacing unit to surface thru the crossing. If a crossing was not pulled, the surfacing unit skipped that crossing, leaving it in its existing condition. Crossings are pulled by the removal of certain materials within the crossing in advance of the surfacing unit and then restoration is made to the crossing following passage of the surfacing unit.

In anticipation of his one day absence, the Track Supervisor conferred with his Assistant Track Supervisor and set forth, in some detail, what he wanted done on November 15, 1984. Arrangements were thereafter made to augment the Claimant's gang with four additional employees and additional equipment, consisting of a dump truck, an air compressor, and a backhoe. Before work began on November 15, 1984, the Assistant **Track** Supervisor instructed the Claimant to meet with the Foreman of the surfacing unit and to remove road crossings ahead of that unit.

The Claimant was assigned as a Track Foreman with supervision of a gang of five other employees. His total service with the Carrier exceeded 13 years and all of it was in the Track Department. He had served as a Foreman for six years. With this experience, the Claimant knew or should have known what was required in the instructions he received from the Assistant Track Supervisor as well as what was necessary to comply with those instructions.

When work was concluded on November 15, 1984, the surfacing unit had surfaced to a point approximately one half mile beyond 76th Street. The unit skipped the road crossing at 76th Street because that crossing had not been pulled by the Claimant and his gang. It is not disputed that the track line and surface were left in an inferior condition to that which would have resulted had the surfacing unit been able to surface through the crossing.

On November 20, 1984, the Carrier charged the Claimant with responsibility for insubordination for failure to comply with the Assistant Track Supervisor's instructions on November 15, 1984, to remove the road crossings ahead of surfacing unit W-261 on that date. Hearing was scheduled and held on November 30, 1984. Under date of December 11, 1984, the Claimant was notified that he had been found responsible for the insubordination with which he had been charged and that an actual suspension of ten-working days was administered as discipline. Subsequently, appeals were taken on the property in behalf of the Claimant by the Organization and those appeals were denied by designated Officers of the Carrier. The dispute has been submitted to this Board and it is properly before us.

It is clear and undisputed on the record that the Claimant was given a fair and impartial Hearing and that the Carrier has complied with all prerequisites of the Agreement in imposing the contested discipline. Likewise, we find the instructions given to the Claimant by the Assistant Track Supervisor before the Claimant and his gang took up work on November 15th, are clear and concise. The Claimant, himself, testified he was to "pull crossings" in front of the Foreman of the surfacing unit and that he was not authorized to skip any crossings or use his own judgement in the matter. Additionally it is not contested that the Claimant and his gang did not "pull" the crossing at 76th Street or that the surfacing unit skipped that crossing, continuing its work to approximately one half mile beyond that point.

At the Hearing on November 30, 1984, the Claimant was given full opportunity to explain his part in the events of November 15, 1984, as well as that of others involved. In short, it was the Claimant's testimony that there was not sufficient time for him and his gang to pull the 76th Street crossing without incurring overtime, which had not been authorized. In support of this overall explanation, the Claimant detailed seven incidents or non-incidents preventing his completion of the work within authorized time. In his testimony, however, he did not mention a single incident where he initiated an attempt to overcome the obstacles he felt prevented fulfillment of his instructions.

In addition to the Claimant, four other witnesses appeared and gave testimony at the Hearing on November 30, 1984. The particulars involved in the charge were adequately developed. While there are conflicts in certain testimony, most is free from dispute. As stated in prior awards, this Board functions in an appellants capacity and we do not resolve conflicting testimony.

While we concur in the position of the Organization that there is no evidence of the Claimant having displayed a rebellious attitude, taken as a

whole, the evidence is clear and convincing that the Claimant was responsible for insubordination, as charged, albeit not openly displayed. Hence, we do not disturb the Carrier's determination.

We have a similar view with respect to the sanction of an actual suspension of ten working days which the Carrier has imposed. Insubordination is serious and a ten day suspension is not excessive in the circumstances herein.

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 30th day of September 1987.