

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26596
Docket Number Mw-26427

Elliott H. Goldstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The forty-five (45) days of suspension imposed upon Track Laborer C. Perkins for alleged insubordination on February 7, 1984 was without just and sufficient cause and on the basis of unproven charges (System File 1984-4).

(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: Claimant is a Track Laborer with a seniority date of April 17, 1972. On February 7, 1984, he was working at Madison Yard and was assigned to System Gang No. 6 when the incident precipitating the instant dispute occurred.

According to the testimony of the Foreman, **L. Guion**, he observed members of the gang standing around and talking instead of performing their job of replacing rail. Guion stated that he instructed the me" three times to get back to work. The third time, Claimant purportedly stated that what they could not do today, they would get done tomorrow. Guion responded that they were supposed to accomplish as much as possible that day, whereupon Claimant insisted that he did not want to be rushed; that he was a ma", he could talk. Foreman Guion then explained that he was not trying to stop him from talking, but that if he could not work and talk at the same time, he should stop talking. According to **Guion's** testimony, Claimant then pushed him and told **Guion** to "stop . . ." with him. Claimant was thereafter removed from service, pending investigation.

At the Hearing, held on February 15, 1984, Claimant denied pushing his Supervisor. He testified that Guion **kept** telling him to "shut up" and get to work when, according to Claimant's testimony, he was already working. Claimant stated that he told **Guion** "Go away and leave me alone so I can go to work."

Three employees who were present at the time of the incident also testified at Hearing. Employees Hudson, Martin and Green all agreed at Hearing that Foreman Guion and the Claimant "got into it," arguing back and forth about whether or not Claimant was performing his job. Green testified that at one point, Foreman Guion stood right up against the Claimant and told him to get to work. At that point, Claimant turned around and bent over to start shoveling, when he bumped the Foreman. Green was unsure whether Claimant's action was **intentional** or not.

Track Supervisor Boyer testified that he arrived at the scene about fifteen minutes later. He stated that Claimant denied pushing or shoving his Foreman and was rather belligerent about being removed from service.

Following the Hearing, Claimant was assessed a forty-five day suspension for insubordination. The Carrier contends that there is substantial evidence on this record to substantiate the insubordination charge. It further maintains that the discipline imposed was neither arbitrary nor unreasonable given the seriousness of the offense proven. Carrier reminds the Board that in this case, Claimant's attitude demonstrated his total lack of regard for the authority of his immediate Supervisor. This type of misconduct will not be tolerated by the Carrier, and, accordingly, it requests that the Board deny this Claim.

The Organization asserts that at no time did the Claimant refuse to perform his assignment. Moreover, there is no evidence that Claimant intended any discourtesy or disrespect toward his Foreman, nor is there proof that he bumped or shoved Foreman Guion. The Organization further emphasizes that Claimant's co-workers corroborate Claimant's testimony with regard to the Incident. Therefore, the Organization concludes that Carrier has not proven its charges against the Claimant and has not demonstrated that the discipline assessed was warranted.

Based on our review of the evidence adduced on this record, the Board is of the view that there is substantial evidence to support the Carrier's contention ~~that~~ Claimant's attitude and verbal remarks were insubordinate. It is well-established that insubordination may involve more than a direct refusal to comply with instructions, but may also involve foul or abusive language, threats and similar offenses. See, e.g., Third Division Award 24732. This Claimant's remarks were clearly disrespectful and inappropriate in the workplace.

The evidence is more equivocal, however, as to whether Claimant physically assaulted his Foreman. Claimant's co-workers corroborated ~~Claimant's~~ testimony that any physical contact appeared unintentional; from all the testimony presented, it appears that while there was a heated exchange between Foreman Guion and the Claimant, Claimant did not deliberately strike his Supervisor. Under these circumstances, while we do not condone Claimant's misconduct, the imposition of a 45 day suspension was unreasonable and excessive. Given the nature of the offense actually proven, which appears to be a verbal altercation in which Claimant participated, we agree that some **measure** of discipline was justified, but will reduce the suspension to twenty **(20)** days.

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

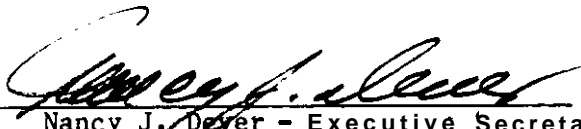
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.