

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26713
Docket Number MW-26571

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
(Northeast Corridor

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

1. The twenty (20) days of suspension imposed upon M/W Repairman J. A. Marier, Jr. for alleged violation of Rule 'I' on March 21, 1984, was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-863D).

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 charged with violation of Carrier's Rule I for allegedly refusing to follow orders and for displaying a "... vicious manner by (his) action of throwing his (hard) hat" while on duty on March 21, 1984. An Investigation was held on March 23, 1984, and the Claimant was subsequently assessed a twenty (20) day suspension.

According to the General Foreman to whom the Claimant was allegedly insubordinate, this Foreman was working on time input sheets at approximately 9:30 A.M. on the day in question and he had requested that the Claimant come into his office to explain a "... problem with his time input sheet." When the problem could not be resolved the Claimant was instructed to get the "... pink copies of his time sheets." After searching through his tool box and finally the stack of pink copies on the Foreman's desk the Claimant retrieved the information requested and returned to the General Foreman's office. This took him approximately 15 to 20 minutes and he returned to the General Foreman's office at just about 9:50 A.M. The General Foreman was on the phone. At about the time the Claimant returned to the General Foreman's office the break buzzer also rang. According to testimony by the Claimant he stated to the Foreman that he knew what the problem was all about and he was going on his break to get a sandwich. According to the General Foreman he instructed the Claimant to wait in the office so they could "... take care" of the error immediately. He then told the party on the phone that he would call them back later. The Foreman testified that he repeated instructions twice to the Claimant to remain in the office but that the Claimant left the office anyway after the buzzer rang. The Claimant does not deny, as he put it at the investigation, that "... (he) turned and left the office and went down the stairs." Despite the instructions the Claimant stated that he left the office for two reasons: first, because "... the break bell had rung,"

and secondly, because " . . . (the General Foreman) was on the phone which (he) would have thought meant that he was busy." In effect, the Claimant does not deny that he disobeyed instructions but offers reasons why he thought it was reasonable to have done so. The second charge against the Claimant alleged that he engaged in ". . . vicious" action by throwing his hard hat. The General Foreman testified that Claimant ". . . took his hard hat off, (and) flung it as hard as he could. It hit the rail and it flew from bay 'D' to bay 'B' where repairmen were standing." Claimant testified that he merely dropped his hard hat when leaving the General Foreman's office after the buzzer had rung. It has been well established that the reconciliation of directly contradictory testimony and establishment of witness credibility is properly the function of the Hearing Officer and not the Board who reviews the appeal. There is substantial evidence of record to warrant the conclusion that the Claimant was insubordinate and vicious.

The final question to be addressed by the Board is whether the discipline issued by the Carrier was arbitrary or capricious. Insubordination has been viewed by this Board as a serious offense (Third Division Awards 26194, 25126, 24311). In the instant case, however, there are a number of extenuating factors which the Board must consider. First of all, the Claimant's past record, during his somewhat short tenure of less than two years with the Carrier, is clean. There is considerable arbitral precedent in this industry which emphasizes that such should be taken into consideration when the question of the quantum of discipline is at stake. Secondly, it does not appear that there was any preconceived ill will on the part of the Claimant when he was insubordinate. The record shows that he may have simply miscalculated his rights when he did not stay in the office as instructed since it was break time, and since he concluded that the General Foreman was on the phone. This does not alleviate the seriousness of the act of insubordination itself, nor does it justify Claimant's losing his temper, but the circumstances suggest that such was the result of merely a strategic error on the part of the Claimant. The Carrier apparently arrived at the same conclusion when it offered to reduce the Claimant's twenty day suspension. On the record taken as a whole, therefore, we find that it would be reasonable to reduce the twenty day suspension to a fifteen day suspension, and Claimant shall be compensated accordingly.

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

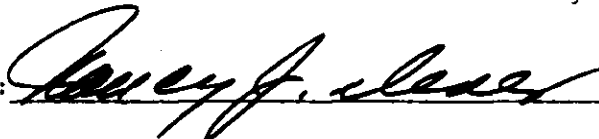
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

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

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.