

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Central of Georgia Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railroad Company:

That Carrier's unwarranted suspension of Signalman T. L. Ricks for a period of five days should be rescinded and claimant allowed payment for time lost. [Carrier file No. SC-545 General Chairman's file No. CG-74]"

FINDINGS:

The Third Division of the Adjustment Board up" the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On August 2, 1982, D. H. Shelton, Project Engineer, directed the following letter to the Claimant:

"Reference to our conversation on July 30, 1982 when I was requested to return to the location of Foreman Dumas' Gang as a result of a problem between you and Foreman Dumas.

According to Foreman Dumas, you were instructed on four separate occasions on that date to roll up the end of cable that was being installed and to put it into a ditch for protection over the weekend. He further states that you ignored his instructions and even went so far as to tell a fellow employee not to pay any attention to him because he was crazy.

As a result of your actions on July 30, 1982 you are charged with insubordinate disregard to instructions issued by your Foreman, resulting in other employees having to perform the duties you were directed to perform.

An investigation of this charge will be held in Room 612, Southern Railway office building, 99 Spring Street, Atlanta, Georgia at 10:00 AM, August 11, 1982.

You are directed to be present for this investigation, and may be represented as provided in the Agreement between the Central of Georgia Railroad Company and the Brotherhood of Railroad Signalman."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal to the Board.

The Carrier's case against the Claimant is essentially **bifold**. First, it is asserted he was not working fast enough at his appointed task. Second, it is asserted that when he was instructed to hurry up by Foreman Dumas he stated to his co-worker "not to pay any attention to him (Dumas) because he was crazy."

The Organization argues that there can be no evidence that the Claimant refused orders since at all times he was digging the ditch as instructed. With respect to his alleged remarks, they note that the Claimant and his co-worker denied Dumas' allegations.

It is the opinion of the Board that with respect to the first portion of the charges (disregarding instructions), the evidence is insufficient to support any discipline. The plain fact is that the Claimant was performing his task. Dumas clearly acknowledge this. The problem was he wasn't doing it fast enough. This fact, in and of itself, does not establish that he was disregarding his Foreman's instructions.

The remaining portion of the charge involves the alleged derogatory remarks to the Foreman. Such remarks are no doubt insubordinate conduct. Encouraging a co-worker not to pay any attention to a supervisor and calling him crazy certainly impedes management's ability to direct the work force.

In reviewing the record with respect to the Claimant's alleged remarks, we are mindful of our limited role as a" appellate body. We do not and cannot assess credibility or weigh the evidence. The hearing officer must do this. Our job is to determine if there is substantial evidence to support the hearing officer's conclusion. Significantly, the evidence does not have to meet a beyond-a-reasonable doubt test.

It is the opinion of the Board that there is substantial evidence to support the Carrier's findings. Specifically, it is noted that after the confrontation Mr. Shelton was asked by Dumas to come to the work site. Shelton talked to Dumas about the incident in the Claimant's presence. Significantly, the Claimant did not at this time deny, In any way, Dumas' accusations. In addition to this, the Carrier notes that Mr. Dumas, also a member of the Organization, had no reason to fabricate his account; he had nothing to gain if Mr. Ricks were disciplined. On the other hand, both Claimant Ricks and Signalman Craig had an obvious vested interest in denying the charges. This constitutes substantial evidence.

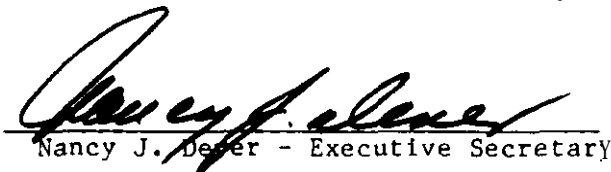
In view of the foregoing, some discipline was appropriate. While five days under these circumstances is on the high side of reasonable, we cannot conclude it is excessive in spite of the fact that only a portion of the charges were proven. Insubordination is a serious charge and cannot be ignored.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.