

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The suspension ('time held out of service') imposed upon Trackman R. T. Rogers for alleged 'Insubordination ... at approximately MP 167.4, M/L Clev-Indpls, ... 11/03/83' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-681-D).

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

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Claimant is a Trackman who, subsequent to an investigation, was found guilty of the following charge:

"Insubordination in that you refused to finish your assigned duties on the track at approximately mile post 167.4, Main Line, Cleveland-Indianapolis as instructed by Rail Engineer M. D. Cohagen at 5:22 P.M., on November 3rd, 1983."

The Organization essentially challenged the Carrier's conclusion that the Claimant had been insubordinate contending that, at the beginning of the shift on November 3, the Claimant advised his Foreman that he had been ill, was taking medication, and wanted to be released at the end of his regular tour, without being required to work overtime. Moreover, the Claimant's condition worsened as the day moved on and the Foreman's insistence that he work overtime was arbitrary and clearly without consideration of the total circumstances.

The Organization also contends that the Hearing Officer did not conduct the hearing proceedings in a fair and impartial manner. Here, it points to specific excerpts from the transcript of the hearing to show that the Hearing Officer solicited speculative testimony, made statements and posed questions that were framed in such a way to establish the Claimant's guilt.

With respect to the procedural and due process contentions of the Organization, we have carefully reviewed the lengthy hearing transcript and the remainder of the record. While the Organization's assertions are not without merit, we do not find fatal error herein. The record shows that the Organization vigorously and with skill closely examined witnesses and brought forth and explored the relevant issues in defense of the Claimant.

Turning to the merits, the Claimant's contention that he was too sick to work overtime runs counter to the evidence adduced at the hearing. This reveals that it was not until the time that the Claimant was ordered to complete his assigned duties that he told his Supervisor that he was sick. Given all the circumstances, the Supervisor's action cannot be said to be unreasonable. Accordingly, the Claimant's refusal to remain at the work site to complete his assigned duties was ill-advised.

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 25th day of April 1988.