

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

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

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

(1) The thirty (30) days of suspension imposed upon Trackman G. Addison for alleged 'Violation of Rule I of the Amtrak Rules of Conduct' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-750D).

(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 employee 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.

The incident leading to this claim occurred on October 17, 1983. On that day, the Claimant and three other employees were moving cross ties. The Carrier essentially contends that one of its Foremen had directed the Claimant and his three co-workers to move certain ties. However, shortly thereafter, the Foreman saw that the other three employees had their tie tongs in position to move ties, but not the Claimant. It is this alleged inaction on the part of the Claimant that led to the disciplinary action now being appealed.

The Organization strongly objects to the findings of the Carrier both on procedural and substantive grounds. We have carefully considered the former and conclude that this matter may best be disposed of on its merits.

With respect to the merits, the Organization maintains that the Claimant did not verbally refuse to do the work. It argues that, after the Claimant was told to move the ties, the crew had to retrieve tie tongs from the bus in order to do the work and, secondly, any slowness on the Claimant's part to comply was caused by his concern that the task he was asked to do had possible safety problems, which he properly could consider.

Certainly, as the Board has observed on many occasions, a Carrier may not require an employee to place himself in an unsafe position at the work site. However, he must have some objective basis for asserting a safety concern. In this case, the testimony indicated that, at the time of the incident, no mention was made by the Claimant of possible safety problems with respect to what he was asked to do.

Insubordination may take many forms. The Claimant's actions had the same result as a verbal refusal to comply with a legitimate order. In this industry, it is well-established that proven insubordination may lead to dismissal. Here, the Carrier, after its determination of guilt to the charge, considered that the Claimant had no other discipline on his record and, in fact, offered to reduce the discipline to a fifteen (15) days suspension. The Claimant rejected the offer. It is also well-settled that offers of leniency do not equate to a weakness of the Carrier's case. There are many reasons why one side or the other might offer to compromise a claim. Such offers should not be construed as admissions on the part of either of the parties and should not be considered by this Board.


In summary, there is credible evidence supporting the findings made by the Carrier and we have no basis to substitute our judgment for that of the Carrier.

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.