

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 Employees
(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 M. Rivera for alleged 'Violation of NRPC General Rules, Rule "I"' was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-754D).

(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.

Subsequent to an investigation, the Claimant was charged with and found guilty of refusing to perform flagging duties.

The Carrier's version of the events leading to this dispute reveals that the person who was assigned flagging duties on November 7, 1983, at Fair Interlocking #3 Track had a defective air horn. Therefore, the Foreman asked the Claimant to give his horn to the Flagman. When the Claimant refused, he was ordered to perform the flagging duties himself. The Carrier asserts that he also refused to comply with that request. Moreover, the Carrier contends that the Claimant, at the same time, directed profane language at his Foreman.

The Organization, in its rejection of the Carrier's assertions, maintains that the Claimant did not have his air horn cannister or his flagging equipment in his possession and, thus, could not properly perform the requested tasks. It contends that the Foreman was aware of this and it strenuously states that, whatever the argument between the two which followed, was provoked, not by the Claimant, but rather by the actions of the Foreman.

Clearly, there was conflicting testimony at the hearing. However, the Carrier chose to believe the testimony of two of its witnesses who essentially stated that the Claimant was asked to flag or let the other Flagman use his equipment. A Foreman also testified that the Claimant had told him he did not want to give up his cannister because he would not get it back. This testimony was essentially unrefuted.

The Board finds credible evidence that reveals that the Claimant refused the order of his Foreman and compounded his refusal by the use of profanity. Therefore, while there may have been a legitimate concern by the Claimant with respect to the release of his cannister, it is well-established that reasonable orders must be complied with and grieved later. Proven insubordination may lead to dismissal. Accordingly, under all the circumstances prevalent in the record before us, there is no legitimate basis for this Board to alter the Carrier's decision in this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT P
By Order of Third Divisi

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day