

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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

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

(1) The discipline imposed upon Trackman W. Powers for alleged violation of Rule 'I' and Rule 'K' on September 16, 1984 was without just and sufficient cause (System File NEC-BMWE-SD-1114D).

(2) The claimant's record shall be cleared of the charges 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.

Claimant entered Carrier's service on July 5, 1985, and at the time of the instant dispute held the position of Trackman in the Track Laying System on Carrier's Northeast Corridor. Claimant was charged with insubordination and violation of Carrier Rules I and K following an incident on Sunday, September 16, 1984, when he allegedly refused to acknowledge his Foreman's questions and walked away despite the Foreman's request that he stay to discuss the matter. An investigation was held on October 8, 1984, and the Claimant was subsequently assessed a twenty-eight (28) day suspension.

According to the Foreman to whom Claimant was allegedly insubordinate, he twice asked the Claimant whether he was working with a particular group. Claimant did not respond until he was asked a third time, when he answered, "I'm standing here just like you." After that, the Foreman testified Claimant walked off the track. When the Foreman asked him to return, Claimant refused and continued to walk away. Claimant was subsequently suspended from service pending investigation.

Claimant at the hearing denied that he was verbally or physically insubordinate. Moreover, he denied leaving the track area and maintained that he fully complied with the instructions of his Foreman at the time in question.

In our review of this case, we concur with Carrier's position that there is substantial evidence in the record to support the charges against the Claimant. 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. On that basis, we conclude that there was sufficient evidence to warrant the conclusion that Claimant was insubordinate.

The remaining question is whether the quantum of discipline assessed was reasonable and proper. While we are not unmindful of the serious nature of the charge of insubordination, we must, however, conclude that mitigating circumstances are here present which warrant the reduction of the penalty imposed. Claimant's past record, though his tenure with the Carrier is of relatively short duration, is excellent. Moreover, the record suggests that there was no preconceived ill will on the part of Claimant when he was insubordinate; rather, he may have simply miscalculated his response or misunderstood the thrust of the Foreman's directives. On the record as a whole, we find it would be reasonable to reduce the twenty-eight (28) day suspension to a twenty (20) day suspension, and Claimant shall be compensated accordingly.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.