

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(Former Western Maryland Railway Company)

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

(1) The dismissal of Track Foreman C. C. Cobey for alleged failure '... to follow instructions given to you by Assistant roadmaster D. L. Nicholas at approximately 7:10 a.m. on Monday, October 10, 1988....' was arbitrary, capricious, without, just and sufficient cause and in violation of the Agreement [Carrier's File 12(88-1048) WMR].

(2) The Claimant should be immediately returned to service, fully compensated for all wage loss, vacation and railroad retirement credits and this entire matter should be expunged from the Claimant's record."

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 was employed as a yard gang foreman and had thirteen years of service. As a result of an incident occurring on October 10, 1988, the Claimant was charged and subsequently found guilty of failing to follow instructions. He was dismissed from service. On May 12, 1989, the Carrier informed the Organization it was arranging to reinstate the Claimant on a leniency basis.

The Organization argues the Claimant was not afforded a fair and impartial hearing nor did the Carrier meet its burden of proof and establish through probative evidence that the Claimant failed to follow instructions given by the Assistant Roadmaster. On the contrary, the Organization maintains the record establishes that the Assistant Roadmaster testified the

Claimant did not refuse to do the job. Significantly, the Organization insists the record also establishes the Claimant was given a choice of doing the work or going home. Furthermore, the Organization contends the Claimant believed he and/or the men assigned to his charge might be injured if the Claimant attempted to move a thirty-nine foot rail weighing 1495 pounds with less than six men.

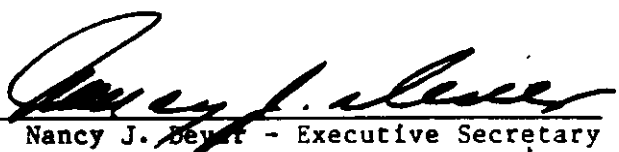
Analysis of the record does not reveal support for the Organization's arguments. The record clearly establishes the Claimant told the Assistant Roadmaster that he would not change the rail without the help of an additional man. Notwithstanding, this Board is well aware that disobedience arises in a variety of circumstances which does not universally result in termination. In this matter the Board finds the Claimant's actions were not a defiant reaction to authority. Rather, it is apparent the Claimant's refusal to perform the assigned work was substantially influenced by his recent return to duty and concern over the lifting of the rail. The Claimant was wrong and insubordinate. Nonetheless, this one isolated act of misconduct cannot bar inquiry into the Claimant's overall record which is discipline free. This fact, coupled with thirteen plus years of acceptable service forces the Board to conclude the Carrier's decision to dismiss the Claimant was a form of discipline disproportionate to the act and, therefore, excessive. Accordingly, this Board has determined the Claimant's dismissal should be converted to a thirty (30) day suspension. The record indicates the Claimant became disabled sometime in December 1988. We, therefore, award the Claimant full compensation for that period of time following the expiration of a thirty (30) day suspension and the date his disability commenced.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.