

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(CSX Transportation, Inc. (formerly The Seaboard
(Coast Line Railroad)
PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

"(1) The Agreement was violated when the Carrier assessed J. L. Bruce a five (5) day suspension for his failure to protect his assignment on May 5, 1989 in violation of Rule 17(b) of the schedule Agreement, [Carrier's file 12 (89-672), Organization's file JLB-89-42].

(2) As a consequence of the aforesaid violation, Mr. J. L. Bruce's service record shall be cleared of the incident and he shall be compensated for any loss of earnings resulting therefrom."

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.

On May 10, 1989, the Claimant was instructed to attend a Hearing on a charge that he refused to perform work on May 5, 1989, and thus left his job unprotected.

Claimant was the Class I tamper operator on a crew that regularly worked ten hours per day, Monday through Thursday each week.

In order to minimize slow orders on the track which accommodated Amtrak trains, the crew had regularly worked on Friday as well.

According to one Carrier witness at the Investigation, the Claimant did not normally work on Friday even though his job was crucial to the operation. However, Carrier did not object to his absence since he had trained his helper to perform the task, and as long as someone was present to perform the duty, Carrier was content.

On at least three occasions, starting on May 2, 1989, the Foreman advised the Claimant that he was required to work on May 5, since the Foreman was aware that the helper would not be present since he had a previously scheduled trip planned and would be away from the area. The Claimant stated that he would not work on all occasions that the topic was raised, but never stated the reasons why, even though he was told the consequences for failure to be present.

At the Hearing, the Claimant conceded that overtime on Friday had been a "must" for "the last couple of years," and he was aware that the helper had a prearranged trip and could not work. Also, the Claimant stated that he was aware that no one else on the gang was qualified to run his machine. Although the Claimant testified at the Investigation, that his absence was due to a necessity to see to certain car repairs, he freely conceded that he never so advised the Foreman when he stated his refusal to work during the first portion of May.

The Organization has raised certain procedural matters in its Submission, but we do not find that they were raised while the matter was under active review and consideration on the property.

The Organization stresses that the Claimant has 22 years of service, had a valid reason for refusing to work, and the Carrier's action was unduly harsh.

We must be confined to the matters of record, and we feel that the Organization has expanded upon those matters in its Submission. Suffice it to say that under the transcript and related documents of record on the property, the Claimant knew that his job was crucial to the operation, and he knew that the only other person qualified to perform the job in question would be absent. Yet he stated a refusal to work without giving any reason.


It is not an easy task to disregard 22 years of good service. But, this Claimant displayed a cavalier disregard for the good of the service and the traveling public. We will not disturb Carrier's assessment of discipline.

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 28th day of February 1991.