

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc.
(formerly The Chesapeake and Ohio Railway Company-
Southern Region)

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

(1) The ten (10) days of suspension imposed upon Trackman M. Spikes for alleged insubordination on August 20, 1988 was arbitrary, capricious and on the basis of unproven charges [(System File C-D-4548/ 12(88-909)].

(2) The Claimant's record shall be cleared of the charge leveled against him and he shall be paid for all wage loss suffered and he shall have the days on which he was suspended from service credited toward his vacation qualifying time."

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 employee 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.

Following a Hearing, Claimant was assessed a ten (10) day suspension for insubordination. The Carrier concluded Claimant was guilty of failing to comply with an order from an Assistant Roadmaster to report to Newport News, Virginia, for emergency work in connection with a derailment. The Organization replies that (1) Claimant was never given a direct order to report or told of the consequences of his failure to do so, and (2) his failure to report was justified because he had been threatened with discharge by the Newport News Foreman.

With regard to the Organization's first point, we do not agree that the Assistant Roadmaster was required to take an authoritarian posture before Claimant could be found guilty of insubordination. He told Claimant that he was needed at the derailment site and that he expected to see him there. There was no indication that Claimant's attendance was optional. With thirteen years of service, Claimant certainly was aware of the implications of his failure to report for duty as directed.

The Organization's second point must be rejected without any regard to whether or not it is true. Unlike a threat of physical harm, Claimant is sheltered from improper discharge by the terms of the Agreement and the grievance process. To excuse Claimant because of such a threat, if actually made, would be to ignore these protections, which include the function of this Board.

Under the circumstances, we cannot conclude the assessment of a ten day suspension was unreasonable. The Agreement was not violated.

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 March 1991.