

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago, Milwaukee, St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier's decision to assess Claimant V. G. Briseno a letter of censure for allegedly refusing to perform work assigned to him and leaving work early of September 1, 1989 was without just and sufficient cause and on the basis of unproven charges (System File C #41-89/800-16-A-94 CMP).

(2) As a consequence of the violation referred to in Part (1) above, the letter of censure shall be removed from the Claimant's record and he shall be compensation for 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 hearing thereon.

On September 1, 1989, Claimant and four others were initially assigned to renew ties at Hoffman Avenue. After arriving at Hoffman Avenue, the crew was advised by the dispatcher that the track could not be taken out of service for renewing the ties.

The crew then was assigned to go to the No. 5 "Rip Track" and raise it out of the mud. Claimant pointed out to the Assistant Foreman that the track in question was covered with five to seven inches of water. The Assistant Foreman suggested that if Claimant had

an objection to the work he should take the matter up with the Foreman. Following a conversation with the Foreman, at approximately 11:00 A.M., Claimant left Carrier's property.

On September 5, 1989, Carrier issued a letter of censure:

"On September 1, 1989 you refused to do maintenance work on rip track at St. Paul yard. This resulted in you going home for the rest of the day. Your objection to the work conditions was not acceptable. The remaining men on the crew were able to complete the work without work under these conditions.

This office feels that in your refusal to work you are in direct violation of Rule 566. ...employees must not be, A) Careless of the safety of themselves or others, B) Negligent, C) Insubordinate, D) Dishonest, E) Immoral, or F) Quarrelsome."

On September 6, 1989, the Organization requested a hearing which was held on September 19, 1989. Following that hearing, Carrier reaffirmed its position and declined to remove the letter of censure from Claimant's file. Carrier also restated its position that Claimant was entitled to only three and one-half hours' pay for September 1, 1989.

Carrier asserts that the Claimant reacted in an immature and improper manner when he voluntarily vacated his position on September 5, 1989. It maintains that the Claimant was not given a direct order to go home, but was given the option to work as directed or go home and he chose the latter. Carrier points out that employees cannot be allowed to take matters into their own hands or to rectify situations which they feel are unsuitable by refusing to perform service. Claimant voluntarily vacated the premises, and therefore accepted by his action that he would receive only three and one-half hours' pay for the day. Thus, Carrier was well within its rights to issue the letter of censure for Claimant's file.

The Organization contests Carrier's position that Claimant abandoned his position on the date in question. It points out that the Foreman gave Claimant the choice of staying to work under the adverse conditions Claimant was protesting or going home. When the Foreman responded to Claimant's refusal to perform the specific task he was ordered to do by saying "you might as well go home." That constituted an order to leave Carrier's premises. Under those circumstances, it is entirely inappropriate for Carrier to discipline Claimant in any way. Therefore, Claimant should have the letter of censure removed from his file and should be made whole for the wages he lost.

It is uncontroverted on the record before the Board that the track in question was under five to seven inches of water. Thus, Claimant may have had some legitimate concerns about the

feasibility of proceeding with the assigned task. In that case, it was appropriate for him to apprise his Foreman of his reluctance to continue working. When directed by his Foreman to return to work however, Claimant refused, electing rather to take the alternative route of "self help": going home for the day.

It is a well-established principle, adhered to by the Board, that an employee is obliged to "obey first and grieve later" unless s/he has a sincere concern for his/her own or others' safety. Nowhere on the record before the Board is there any suggestion that Claimant feared for his safety. Accordingly, his refusal to work, and his subsequent choice to leave Carrier's premises for the remainder of the work day on September 1, 1989, constitute acts of insubordination.

In view of the foregoing, the Board finds no basis for overturning Carrier's assessment of discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devitt - Executive Secretary

Dated at Chicago, Illinois, this 7th day of Decembet 1992.