

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29861

Docket No. SG-30066

93-3-91-3-481

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(CSX Transportation, Inc. (B&O)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (B&O);

Claim on behalf of T.C. Reeder, for payment of 10 days pay at his respective straight time rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Discipline Rules, when it failed to find him guilty of insubordination." Carrier's File No. 15(90-50). BRS File Case No. 8493-CSXT.B&O.

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 employe 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.

At the time of this dispute, the Claimant, a Foreman and two other Signalmen were working in Hamilton, Ohio, and staying at a Holiday Inn in Fairfax, Ohio.

On February 4, 1990, Claimant contacted an Organization Representative, and informed him that the food at the Holiday Inn was "of poor quality." The Organization Representative contacted the Foreman who stated that the "food is okay." Claimant sent a subsequent letter to the Organization Representative stating that "the food is still inferior." This letter was also signed by two other Signalmen.

The Organization Representative then contacted the Director Signal Maintenance and Construction, and asked him to send someone to Fairfax to investigate the complaint. On February 15, 1990, the Director sent the General Supervisor of Signals to Hamilton, Ohio.

According to witnesses, the General Supervisor made no effort at all to investigate and deal objectively with the gang's complaint about the food. Instead, upon arrival at the gang bungalow the General Supervisor initiated a confrontation with the following proclamation: "There is nothing wrong with the food, and that is the end of it." The General Supervisor also told Claimant that he was a "troublemaker" and made other disparaging remarks concerning Claimant's "fitness as a maintainer." Claimant reasserted that the food was of poor quality and insisted that something had to be done about it. As the tenor of the conversation deteriorated, Claimant stated that he did not believe that the Foreman had spoken to anyone about the food problem and therefor the Foreman was a "liar." Claimant also told the General Supervisor that he was "incompetent." According to witnesses, the verbal confrontation lasted approximately 30 minutes.

On February 26, 1990, Claimant was charged with being "argumentative and calling Foreman Dilbeck a liar and calling General Supervisor Peterson incompetent." Following a hearing, Carrier imposed a ten day suspension on Claimant for "unacceptable conduct."

The Organization appealed the discipline arguing that "Mr. Reeder was not being insubordinate, he was only stating his feelings to Mr. Peterson and that Mr. Dilbeck was not relaying the food/meal problem to Mr. Peterson." Carrier stated that "there is sufficient evidence in the transcript proving the charges against the Claimant." Further correspondence failed to resolve the dispute which is now before this Board for adjudication.

A careful review of the transcript reveals that Claimant must bear some responsibility for his unacceptable behavior but that culpability is mitigated because he was provoked and goaded into his intemperate verbal remarks by the equally unacceptable conduct of Supervisor Peterson. The Board find's the testimony of the Foreman regarding the incident to be objective and instrutive concerning the relative behavior of the General Supervisor and Claimant:

"Q(102) Do you feel that Mr. Reeder was insubor-  
dinate to you as a Foreman?  
A(102) No sir."

"Q(108) Was he making a mountain out of a mole-hill?

A(108) No, sir."

"Q(135) Then you and Mr. Reeder did not have any conflict, is that correct?

A(135) No."

"Q(125) Did Mr. Peterson become aggressive and raise his voice?

A(125) Yes sir.

\* \* \* \* \*

Q(126) Was he aggressive towards Mr. Reeder?

A(126) Yeah, aggressive, he didn't lunge out at him, I mean he wasn't....

\* \* \* \* \*

Q(129) Did he at any time curse at Mr. Reeder?

A(129) Yes sir.

\* \* \* \* \*

Q(130) Did Mr. Reeder curse at him?

A(130) No sir.

\* \* \* \* \*

Q(131) At any time did Mr. Peterson lose control of himself by hitting anything or striking anything?

A(131) Yes he did. He slammed his hand against the step.

\* \* \* \* \*

Q(132) Did Mr. Reeder at any time show any kind of similar emotions?

A(132) No sir.

\* \* \* \* \*

Q(133) Was Mr. Reeder aggressive towards Mr. Peterson?

A(133) Not aggressive, but maybe not as patient to let him get everything he wanted out and said. He didn't let him finish. Neither one were letting each other finish what they had to say."

It is clear that the Claimant's behavior was unacceptable. However, it is equally clear that the General Supervisor also behaved inappropriately to provoke Claimant's response by being unnecessarily confrontational and escalating the dispute. Therefore, the Carrier is directed to reduce Claimant's suspension from ten to five days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.