

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37355
Docket No. MW-37973
05-3-03-3-400

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Springfield Terminal Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) working day suspension without pay and disqualification as a ‘foreman-mechanic’ effective January 16, 2003] imposed upon Mr. R. Bucknan for alleged violation of Springfield Terminal Safety Rule GR-C in connection with charges of refusal (sic) take a Form-D out on the Madison Branch as instructed by his supervisor on December 20, 2002 was arbitrary, capricious, unwarranted and in violation of the Agreement (Carrier’s File MW-03-11).
- (2) As a consequence of the violation referred to in Part (1) above, the discipline shall now be removed from Mr. R. Bucknan’s record and he shall be compensated for any and all losses.”

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 were given due notice of hearing thereon.

The Claimant is a long term employee working since April 1971. On December 20, 2002, the Claimant held the position of B&B Foreman Mechanic. On that date, B&B Supervisor J. Day informed the Claimant that a beaver dam was partially obstructing a culvert and requested the Claimant and another employee to clear the culvert. A Form D (on-track protection) was necessary and Supervisor Day instructed the Claimant to obtain the form. However, as the Claimant testified, he refused to follow Supervisor Day's instruction:

"[A] The only thing I refused to do was to take a Form D which I felt was . . . I felt uncomfortable doing.

* * *

I refused to do it. . . ."

Supervisor Day had to get another employee to take out the Form D, pick the Claimant up and remove the dam.

After an Investigation held on January 3 and by letter dated January 16, 2003, the Claimant was suspended five working days without pay and was disqualified as a Foreman Mechanic. This claim followed.

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. By the Claimant's own testimony, he was given an instruction to take out a Form D and he refused. That is insubordination and in violation of Rule GR-C ("Any act of insubordination, hostility, or willful disregard of the Company's interests will not be condoned. . . .").

The Claimant's assertion that he was not qualified to take out the Form D do not change the result. The Carrier asserts that the Claimant was Rules qualified to do so and, in any event, we do not see how the act of taking out the Form D in accord with his supervisor's instructions placed the Claimant in any immediate unsafe situation. If the Claimant disagreed with the instruction given to him, his

obligation was to obey the instruction and protest that instruction at a later time. The work site is not a debating society.

We do not find that a five day suspension was arbitrary. Insubordination is serious misconduct - indeed, Rule GR-C specifies that insubordination is “. . . sufficient cause for dismissal.” A five day suspension serves the purpose of sending the Claimant the message that he must follow his supervisors’ instructions.

However, we do find that the added penalty of permanent disqualification from being a Foreman is excessive. The Claimant has now been unable to hold a Foreman’s position for over two years. In our opinion, that is sufficient time to add to the message to the Claimant that he is required to follow his supervisor’s instructions. Pending his passing the appropriate examinations, if any, the Claimant shall be allowed to re-qualify for the Foreman’s position. See e.g., Third Division Award 36831 (“... permanent disqualification is not warranted. . .”).

We considered the Organization’s procedural arguments and find that they do not change the result.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 2005.