

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37577
Docket No. MW-38158
05-3-04-3-59**

The Third Division consisted of the regular members and in addition Referee Peter M. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The discipline [five (5) working days suspension] imposed upon Mr. A. Lewis in connection with performance of duty and allegedly being quarrelsome and insubordinate when questioned by Bridge Supervisor M. Dumas at the Huey P. Long Bridge Tower 31 at 11:55 A.M. on January 21, 2003 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File MW-03-1-NOPB).**
- 2. As a consequence of the violation referred to in Part (1) above, the aforesaid charges shall be removed from Mr. A. Lewis' record and he shall be compensated for all time lost with all rights and benefits restored, and he shall be compensated for eight (8) hours at his straight time rate of pay for attending the investigation on February 11, 2003 and for any and all expenses incurred in connection therewith.”**

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.

By letter dated January 22, 2003, the Claimant was informed that he was being issued a five-day suspension for allegedly violating Safety and General Rule 1.6, after a January 21, 2003, exchange between Bridge Supervisor M. Dumas and the Claimant about the Claimant's work performance. Pursuant to Rule 16 of the parties' Agreement, the Claimant requested an Investigation, which ultimately was conducted on February 11, 2003. By letter dated February 18, 2003, the Claimant was informed that the discipline had been upheld. The Organization thereafter filed a claim, challenging the Carrier's decision to discipline the Claimant. The Carrier denied the claim.

The Carrier initially contends that the facts developed during the Investigation support the discipline issued to the Claimant. The Carrier maintains that the record clearly shows that the Claimant was responsible for poor work performance, and that the Claimant was quarrelsome and insubordinate to the Bridge Supervisor.

The Carrier asserts that during the exchange between Dumas and the Claimant, Dumas tried to counsel the Claimant and pointed out that the Claimant had completed only part of the painting work assigned to him. Dumas also reminded the Claimant that there were other letters in the Claimant's file for poor work performance. The Carrier maintains that the Claimant responded by becoming quarrelsome and insubordinate, in violation of Rule 1.6. The Carrier further argues that Dumas complied with Rule 16 by informing the Claimant of his discipline on January 21, 2003, and confirming that discipline by letter on January 22, 2003.

The Carrier asserts that it did not abuse its discretion by assessing the discipline at issue. There is substantial evidence in the record to justify the

Claimant's suspension, particularly Dumas' testimony. The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the record fails to prove that the Claimant violated any portion of Safety and General Rule 1.6. The Organization maintains that Dumas' testimony makes clear that the Claimant was disciplined because Dumas perceived the Claimant's work performance to be poor. The charge letter, issued the day after the Claimant was sent home, supports this conclusion. Although this letter refers to Safety and General Rule 1.6, it fails to establish which of the eight parts of this Rule the Claimant was guilty of violating.

The Organization asserts that the transcript does not support the Carrier's determination that the Claimant had been quarrelsome and insubordinate. The Organization points out that the testimony of the only other witness with direct knowledge of the exchange between Dumas and the Claimant does not corroborate Dumas' recollection of the incident. The Organization emphasizes that the Board consistently has held that an employee cannot be found guilty on the testimony of a single witness.

The Organization further points out that Dumas has a decided interest in supporting the charges against the Claimant because he sent the Claimant home and deprived the Claimant of five days' work before the Investigation was held. The Organization emphasizes that the Claimant and Dumas have completely different views of the events that transpired, but co-worker Phillips also was present during the entire exchange. Phillips' testimony clearly shows that Dumas was the aggressor, while the Claimant was merely defending his work and the Claimant raised his voice only when threatened and provoked by Dumas.

The Organization argues that it is well established that the Carrier bears the burden of proof in discipline cases. In the instant case, however, the Carrier failed to prove the charges leveled against the Claimant for which discipline was imposed. Under the circumstances, the Claimant is entitled to the full remedy requested in the claim.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board reviewed the evidence and testimony, and we conclude that there is sufficient evidence in the record to support the finding that the Claimant was guilty of acting in violation of the Carrier Rules when he had a shouting match with his supervisor on January 21, 2003. It is clear from the record that the Claimant was receiving instruction about his work from his supervisor and he reacted in a temperamental manner and raised his voice beyond what was appropriate for the circumstances. The Board has ruled on numerous occasions that the workplace is not a debating society. The Claimant should have accepted the instruction from his supervisor without the aggressive response and insulting comments that he made.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was issued a five-day suspension. The Board believes that there is insufficient cause to issue that lengthy suspension to the Claimant for this minor disagreement in the workplace. Consequently, we find that there was just cause for the issuance of a three-day suspension and we order that the Claimant be made whole for the additional two days.

In addition, the Board finds no basis for the Organization's claim that the Claimant should be compensated for eight hours for attending the Investigation on February 11, 2003. Therefore, that part of the claim is denied.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 5

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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 August 2005.