

Award No. 11803
Docket No. MW-11149

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) The Carrier's action in suspending Assistant Foreman C. Corbett, Section Laborers J. Render, T. Gray, E. J. Sterchi, W. Alexander, E. Johnson, R. A. Heerdink, W. Irvin, D. Wilford and S. Anderson from service for a period of seven and one-half days, beginning at 11:30 A.M. on February 6, 1958, was without just and sufficient cause and on the basis of unproven charges.

(2) The personnel record of each claimant named in Part (1) hereof be cleared of any unfavorable entry thereon and that each claimant be reimbursed for all monetary loss suffered because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: Claims were held out of service starting at about 11:30 A.M. on February 6, 1958 pending investigation. On February 7, 1958 they were notified as follows:

"This is to advise you that an investigation will be held in the Trainmaster's office at Wansford at 10 A.M., Tuesday, February 11th, concerning your violation of the rules of Schedule No. 3, current agreement between the C&EI Railroad Company and the employees represented by the Brotherhood of Maintenance of Way Employees. This action is being taken account your leaving an emergency job account rain and your insubordination." (Emphasis ours.)

Such an investigation was held on February 11, 1958 and on February 13, 1958. Carrier notified Claimants that they "were responsible for insubordination" and suspended them for seven and one-half days without pay to include the days they were out of service pending the investigation. They were directed to return to work on Monday, February 17, 1958.

The Record shows that on February 4, 1958 a ten car loaded freight train was derailed in the Wansford Yard, Evansville, Indiana. Tracks "C" and "D"

were torn up; two cars were demolished, two turned over and one was buried in the wreckage debris. The Wansford Wrecker was called to clear the wreckage.

The Wrecker was at work on February 6, 1958, so were Claimants who were detailed to work with the wrecking crew. It rained that morning. Claimants conferred among themselves and proceeded toward their truck to get out of the rain. At one time during this interval their Foreman diverted them to place a rail under a car which the wrecking crew were rerailling, which they did and returned to their truck.

Claimant's Foreman testified at the investigation that this occurred about 10:20 A. M. After a short while the foreman walked over to the truck where Claimants were sitting and said, "If you're not going to work, may as well go to the tool house." At about 10:50 A. M., the Track Supervisor, R. L. Keister, came to the tool house and asked what the trouble was. The Foreman advised him that "the men just all walked off." The Track Supervisor advised the Foreman to ask the men if they wanted to work while he (the Track Supervisor) called his boss. The Foreman asked Claimants if they wanted to work. They remained silent; they did not reply.

The following is additional testimony by Claimants' Foreman, Orville E. Wallace.

"We ate our lunch and at 11:30 I said 'It's time to go to work. Are you going to work?' They were all talking about it when Mr. Keister came back. He said 'Send them all home, including Cecil.' We got in the truck and went back down to the job, got out of the truck and Mr. Keister came rushing back and said every one of us load up and just leave the tools right there, told me to take the men in and bring the truck back out here and spike the switch when the wrecking crew finished up."

When Claimants first went to the truck before the lunch period Mr. Wallace said to them: "If you're not going to work, may as well go to the tool house."

Mr. Keister, the Track Supervisor, testified that, when he missed the men at the scene of the derailment, he went to the tool house. He found the men sitting on the floor, playing cards. His testimony continued as follows:

"I called Mr. Wallace, truck gang foreman, outside and asked Mr. Wallace what was the trouble that we were not working at the derailment and Mr. Wallace told me that the men walked over and got in the truck about 10:20, said they were not going to work in the rain. After they refused to work in the rain he said there's no point sitting in the truck, they might just as well go to the tool house. I told Mr. Wallace to go back in the tool house and ask the men if they wanted to go to work, if not, in case of emergency I was going to the office and call Mr. Huffman to find out if I was doing the right thing, taking these men out of service. Mr. Huffman notified me that if the men refused to work in emergency, I should take them out of service."

"Upon my return to the tool house at 11:45 A. M., the men were still in the tool house and I walked in and said to the men, 'I see you have not made up your minds to go to work.' I told Mr. Wallace to

take the men on in to their tool house and release them, that we would have an investigation and see whether we would work in emergency in the rain or not. Mr. Wallace told the men to get in the truck. They started to get out of the truck to pick up their tools. I told him to let the tools go, that we would not pick them up with them, to take them all in to the tool house."

All of the Claimants admitted at the investigation that they never told either Mr. Wallace or Mr. Keister that they intended to go back to work. They claim that they so intended to go back to work after lunch and that when they got into the truck to go to the place of the derailment, that showed their intention. The fact is, however, that the foreman did not tell Claimants to go to the truck. They never got permission; they talked among themselves and made no affirmative statements to any of Carrier's supervisors that they were ready and willing to continue to work.

If it was true that Claimants had no work to do when they got into the truck to get out of the rain, and if it was true that the wrecker foreman told them to get out of the way, why did they not tell this to Mr. Keister when he appeared twice at the tool house? Why did they not say this to their own foreman, Mr. Wallace?

It is a well established principle of this Division "that a disciplinary action will not be set aside unless the Carrier was arbitrary, vindictive or acted in bad faith. It is also the position of this Board that we cannot substitute our judgment for the Carrier." (Awards 11017, 11324 and 11531 (Dolnick), 10642 (LaBelle), 10595 and 10596 (Hall) and others. Carrier was not arbitrary or vindictive and did not act in bad faith.

There is substantial evidence in the record to support the charge that Claimants were guilty of insubordination. Carrier has met the requisites of burden of proof to support the suspension penalty.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.