

Award No. 16029

Docket No. MW-16417

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Nathan Engelstein, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****SEABOARD AIR LINE RAILROAD COMPANY**

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

(1) The dismissal of Laborers Paul Black and Willie Donald on April 28, 1965 for alleged insubordination was without just and sufficient cause and on the basis of unproven and disproven charges. (Carrier's File PD-B PD-D G-10-2)

(2) Messrs. Paul Black and Willie Donald each be paid for all time lost from the date of their dismissal on April 28, 1965 to the date of their restoration to service on October 18, 1965.

OPINION OF BOARD: Claim is made in behalf of Laborers Paul Black and Willie Donald that they were dismissed from service for insubordination on April 28, 1965 to October 18, 1965, without proven charges after an investigation held on May 14, 1965.

Our review of the transcript of investigations discloses conflict in the testimony of the witnesses. The Foreman testified that Mr. Donald refused to pick up a joint and a piece of rail and carry them to another location. Mr. Donald asserted that he did not refuse to do the work, but stated that the task was too heavy for him to handle alone. The Foreman also testified that when Mr. Black returned with water to cool the drill, Mr. Black interfered with the discussion he was having with Mr. Donald, and when Mr. Black was told this conversation did not concern him, Mr. Black became defiant and antagonistic. Mr. Black, on the other hand, explained that his opening remarks were directed to his fellow laborer, Mr. Donald, whom he was going to assist in the movement of the rail and that his conversation was misinterpreted by the Foreman. In addition to these conflicts, the record shows that Welder A. D. Crosby, the only witness present at the time of the incident, testified he did not hear the conversation between the Foreman and the two laborers and, therefore, could not state whether or not the laborers were insubordinate.

The variance in testimony points up that there may have been some misunderstanding between the Foreman and the laborers. Nevertheless, the behavior of the Claimants cannot be excused as only a misunderstanding, for

their expressions and actions were defiant and insubordinate. Considering the entire incident, we find that although discipline was warranted, it was too severe.

Accordingly, we reduce the suspension to ninety days out of service from April 28, 1965, and allow payment to Paul Black and Willie Donald for time lost after the ninety-day suspension to the date of their restoration to service on October 18, 1965. This award is not to be construed nor cited as a precedent.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 discipline imposed was excessive.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of December 1967.