

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19338  
Docket Number MW-19403

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Gulf, Mobile and Ohio Railroad Company

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

(1) The suspension of Assistant Foreman E. D. Brister for five working days (September 3 through September 10, 1970) was without just and sufficient cause (System File E-41-158).

(2) The record of Assistant Foreman E. D. Brister be cleared and he be paid for all time lost in accordance with Rule 24(f).

OPINION OF BOARD: Claimant, an Assistant Section Foreman, was suspended for five days "for failure to comply with Rule and instructions of GM&O RR and track supervisor."

Claimant was operating a dump truck. After loading spikes at Artesia he was proceeding to Meridian. At Scooba the Agent flagged him down and told him to return to Artesia and pick up a track frog. Although the Agent told him there would be someone there to assist him, he found that the section crew had gone out of service by the time he returned. He located the frog in the Artesia truck.

Claimant had no tools and since the frog weighed in excess of 1,000 pounds he could not move it. The Agent tried to locate his supervisor, but could not. He did learn that he was between West Point and Okolana. After about thirty minutes Claimant returned to Meridian, without the frog.

Carrier concluded that Claimant could have safely transferred the track frog from one truck to the other. The record shows that such an attempt would have been an unsafe act, and itself, a Rule violation. Claimant had no tools and no assistance. Carrier's assertion that he would have gotten assistance from non-employees is unrealistic. He had no authority to call the section crew and there is nothing of record to show that he even had the means to do so.

Carrier concluded that Claimant made no attempt to get the frog to Meridian. He did attempt to locate his supervisor but could not contact him. His effort was not unreasonable or inconsistent with the operative situation in which he found himself.

Carrier also found that Claimant's performance was deficient, because he failed to obtain assistance and he did not wait to see if his supervisor arrived at either West Point or Okolana. The first mentioned point is covered above. The record shows that assistance could be obtained, if at all, only through contact with his supervisor. Claimant tried to establish this contact. When he learned the general area that his supervisor was in he still had no rational basis for assuming he could get in touch with him by simply waiting. He could have waited for hours and still not have been able to talk with his supervisor.

Claimant did not telephone his supervisor at home upon his return. Carrier found that this fact was a failure on Claimant's part to carry out his duty. However, the record does not show that Claimant had been apprised by anyone, or any fact from which he could have concluded, that there was any urgency involved in the situation. If anything, the absence of his supervisor or anyone else interested in receiving or using the track frog immediately upon his return to Meridian could only reinforce a reasonable belief that his assignment was routine. Carrier, on the other hand, stresses the importance of getting the track frog to Meridian. The transcript of the investigation is barren of evidence bearing on this point.

Carrier's decision to suspend Claimant, based on the record in this case, was an abuse of its discretion. The claim must, therefore, be sustained.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Kellum*  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1972.