

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21319  
Docket Number NW-21487

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Louisville and Nashville Railroad Company

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

(1) The dismissal of Track Repairman F. O. Hudson on July 25, 1974 was without just and sufficient cause [System File 1-25 (52)/D-105580 E-306-117].

(2) Track Repairman F. O. Hudson shall now be reinstated to service with seniority unimpaired and he be paid for all time lost.

OPINION OF BOARD: The Claimant, a track repairman, employed approximately 18 months, was dismissed for insubordination on July 25, 1974, after an investigation on the property. The insubordination charged consisted of the Claimant's refusing to answer questions addressed to him by the Roadmaster as to work performed by the gang of which he was part. The Claimant when questioned, answered that the Roadmaster would have to ask the Foreman who was not then present, what the gang had been doing. The Roadmaster then asked Claimant what Claimant had been doing. The Claimant refused to advise the Roadmaster. The Foreman arrived while this confrontation was in progress and then advised the Roadmaster what the gang had been doing.

There is little doubt that the Roadmaster to properly discharge his function was entitled to receive information about what the gang had been doing. It also is understandable why a member of a gang might be reluctant to explain to his Foreman's superior in the Foreman's absence what his gang had been doing. In the opinion of the Board Claimant was on good grounds to refrain from giving information on matters reserved to the Foreman. However, when questioned as to his own activities, an answer could have been given. A failure to give an answer to a proper question of a supervisor was in the opinion of the Board an act of insubordination for which a discipline could properly have been assessed.

The discipline assessed was dismissal.

It is well established that this Board cannot interfere with the judgment of the Carrier in assessing discipline unless the discipline was arbitrary or unreasonable in amount. It is the opinion of this Board that the factual circumstances in this case were not such as to sustain permanent dismissal. Even though insubordination is a serious offense, the degree here shown was not sufficient to justify permanent discharge. For this

reason we direct that Carrier reinstate Claimant, with all rights unimpaired, but without pay for time lost while out of service.

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 was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.

