

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21447
Docket Number MW-21419

Nicholas H. Zumas, Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Louisville and Nashville Railroad Company

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

(1) The discipline assessed Foreman J. D. Hensley was without just and sufficient cause and in violation of the Agreement (System File 1-1 (12)/D-105514 E-306-2)

(2) The charges placed against Foreman J. D. Hensley be stricken from his record and he be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, an employe in Carrier's service for 21 years including the last five years as Foreman, was charged with insubordination for refusing to work on a rest day without compensation for travel from his residence to the work site. During all the years in Carrier's service, Claimant had an unblemished record.

On Friday, June 7, 1974 the Roadmaster informed Claimant that he was to work the next day which was Claimant's rest day. Claimant responded that he would not work unless he was paid travel and expenses (about 150 miles). When Claimant returned to work on Monday another employe was working in his place, and Claimant was told that he could not work until he spoke with the Division Engineer. Claimant attempted to reach the Division Engineer several times that day without success. In the meantime he received a letter from the Division Engineer dated June 10, 1974 charging him with insubordination for refusing to report to work as instructed and informing him that he was being held out of service pending investigation. Hearing was set for June 14, 1974 but at the request of Claimant and his representatives the hearing was rescheduled for June 21, 1974.

On July 22, 1974 Claimant was reinstated to service with the understanding that his claim for lost time from June 10, 1974 to July 21, 1974 was preserved. It is interesting to note that Claimant, subsequent to the hearing, was given no formal notice of dismissal or suspension. The record reveals that Claimant remained indefinitely suspended until the Carrier's Staff Assistant-Labor Relations agreed that Claimant could return to work during a telephone conversation with the General Chairman on July 17, 1974 as evidenced by the General Chairman's letter of the same date. Whether or not such informal discipline procedure was in compliance with Rule 27 is moot inasmuch as it was not handled on the property. For all intents and purposes we must treat Claimant's being taken out of service from June 10, 1974 to July 22, 1974 as a suspension "pending the hearing and decision," (Underscoring added), and that there has been no finding by Carrier that Claimant was in fact guilty of insubordination.

The Board is limited, therefore, to the question of whether the alleged insubordination herein (refusal to work on a rest day unless compensated for travel and expenses) warranted a suspension of 42 days "pending hearing and decision."

The operative language is found in Rule 27(c), and states:

"If the offense is considered sufficiently serious, the employe may be suspended pending the hearing and decision."

Carrier argues that since an employe may be dismissed for insubordination, such offense is sufficiently serious so as to justify suspension pending hearing and decision.

The Board has no disagreement with the concept that an employe may be dismissed for insubordination. That is not involved here. What is involved is whether, under the circumstances of this dispute, Carrier was justified in suspending Claimant for 42 days "pending hearing and decision" because of his alleged insubordination.

While some awards go further, it is generally accepted in a majority of awards that have interpreted language allowing a Carrier to take an employe out of service pending hearing and decision, that such action is justified when it appears that an employe is a hazard to his own safety and the safety of others, gross misconduct, or that failure to take an employe out of service would impede Carrier in the proper and effective conduct of its business.

Applying this standard to the particular facts and circumstances of this dispute, the Board finds that suspending an employe with a 21 year unblemished record for 42 days pending a decision was arbitrary and capricious.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The Carrier violated the Agreement.

Award Number 21447
Docket Number MW-21419

Page 3

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.