

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22511
Docket Number CL-21974

James F. Searce, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station Employes
{ Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8354) that:

"(a) Carrier violated the Agreement when it wrongfully suspended L. C. Marshall following an investigation held at Homewood, Illinois, May 3, 1976, and that

(b) Carrier now be required to compensate claimant Marshall at the rate of \$47.04 per day, for April 23, 24, 25, 28, 29, 30; May 1, 2, 5, 6, 7, 8 and 9, 1976, and his record cleared of all charges as a result of being held out of service pending investigation and the decision rendered on the alleged charge of insubordination April 23, 1976."

OPINION OF BOARD: On April 23, 1976, Claimant -- a Stockman -- was instructed on three different occasions to assist another employe in the operation of an overhead crane. There is nothing to indicate that such orders were not issued by the appropriate supervisor or that the order to assist the crane operator was not clearly within the Claimant's duties. The first order was given while the Claimant was working at a desk; the Claimant did not engage the supervisor in eye contact at the time nor did he orally respond. Some time passed and the Claimant's supervisor was queried by the crane operator as to the assistance assured him, indicating that the Claimant had not reported. The supervisor sighted the Claimant on the floor above him in the stock area and again instructed him to assist the crane operator. The Claimant again did not respond, but did look directly at him during the issuance of such instructions. An hour and a half later, the crane operator informed the Claimant's supervisor that he was still without assistance. The supervisor located the Claimant and upon questioning as to why he had not followed instructions, the Claimant protested that two other employes could be assigned such work. According to the Carrier, the Claimant commenced berating his supervisor and further refused to work on the crane. At that point he was taken out of service.

The Claimant contends: that the first he heard about the need to assist the crane operator was around 10:00 a.m. (the last time the Supervisor raised the matter); that he did not question the assignment; and that he was preparing to go to the crane when he was removed from service. The Organization raises a procedural question as a defense in this matter -- it objected to the charging supervisor being present in the hearing while testimony was being elicited from the Claimant. We find no error in the Hearing Officer's decision to permit the supervisor to be present during such testimony. As to the merits of the case, only two witnesses to the incident testified at the hearing -- the Claimant and his supervisor. (Another witness was notified, but failed to appear.) While recognizing that it is not the Board's responsibility to reconcile conflicting testimony, we are compelled to conclude that a review of the records and the circumstances involved gives credence to the Carrier's version of events. The Claimant did not contend that the supervisor did not approach him twice prior to the 10:00 a.m. confrontation; he merely indicated the latter encounter was the first time he heard the supervisor. This oblique disclaimer, coupled with the apparent penchant of the Claimant not to respond when addressed, supports the Carrier's contention that the Claimant heard what he chose to hear. While the Claimant may have preferred not to work with the crane on that day, unless he was prepared to demonstrate why it was not properly within his range of duties (even then an "obey and grieve" action may have been proper) or that he was physically incapacitated, he was obliged to perform such work.

We find no reason to upset the Carrier's discipline in this case.

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

That the Agreement was not violated.

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Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1979.