

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23037
Docket Number MW-23081

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

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

- (1) The suspension of fifteen (15) days imposed upon Trackman N. E. Roberts was without just and sufficient cause and on the basis of unproven and disproven charges (System File C-4 (13) -NER/12-39 (78-18) J)
- (2) Trackman N. E. Roberts' record shall be cleared of the charges leveled against him and he shall be reimbursed for all wage loss suffered."

OPINION OF BOARD: Claimant is a trackman assigned to Section Gang 7065, headquartered at Croom, Florida. On November 30, 1977, claimant's gang was assigned to work with two other gangs to repair a highway crossing at Floral City, Florida. Roadmaster T. C. Simmons was in charge of the job and E. E. Ellis was foreman of Gang 7065.

In the early morning, the roadmaster observed claimant talking in a loud voice and singing. He asked Foreman Ellis about this. Foreman Ellis explained that it was claimant's normal behavior. The roadmaster called claimant to the side and spoke to him. Claimant walked away and went back to work, before the conversation was concluded. In a loud voice, the roadmaster ordered claimant to return, so that he could finish his instructions about talking, singing, and shouting on the job.

Carrier alleges that during this second conversation, claimant told the roadmaster that he could not make him stop talking or singing, as long as he did not bother others. It is also alleged by Carrier that claimant continued his disruptive behavior for at least two hours after he was told by the roadmaster to stop. Carrier subsequently charged claimant with disruptive conduct, a violation of General Rule 15 and that portion of Rule 18 relating to insubordination.

A hearing was held into the matter. Claimant was found guilty as charged and assessed a 15-day, actual 10-work-day, suspension. A transcript of that hearing has been made a part of the record of this case.

A review of that transcript reveals that claimant was afforded all procedural rights required by contract. The Organization filed a claim in the instant case, alleging Carrier was arbitrary and capricious in assessing a 15-day suspension. Carrier denied the claim at every level. It is now before this Board for resolution.

A review of the record persuades this Board that claimant did act in an insubordinate manner toward the roadmaster and that he is deserving of some level of punishment for this behavior. Based on the record, however, this Board does not think that the employer has carried its burden of proving that claimant, by his action, was in violation of Rule 15.

Rule 15 states:

"Employees must keep physically and mentally fit, stay alert, and work in harmony with associates. When on duty, they must avoid distractions and keep their minds on their work."

Carrier has not indicated by any specific examples or persuasive arguments in what way claimant was in violation of this rule. Carrier has more of a responsibility in this instance than just to claim that employees were disrupted. It must present some evidence to support its statement. That has not been done.

It is interesting to note that Foreman Ellis, when asked about claimant's behavior, told the roadmaster that claimant was only acting normally. It would appear to this Board that had claimant's behavior been as disruptive as Carrier claims, some discussion would have been held with him prior to the major incident in this case.

This Board also wants to point out to claimant that it does not condone his attitude concerning authority on the job, and that this award can in no way be interpreted as doing so. We have arrived at our decision based on Carrier's failure to prove part of its charges involving Rule 15.

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 in part and denied in part. The 15-day, actual 10-work-day suspension shall be reduced to a 7-day, actual 5-work-day suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.