

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James F. Searce, Referee

Award Number 23129
Docket Number MW-23045

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 discipline (30 days' suspension) assessed Trackman B. L. Smith, Sr. was without just or sufficient cause, unwarranted and in violation of the Agreement. /System File C-4(13)-BLS/.

(2) The claimant's record shall be cleared of the charge placed against him and he shall be reimbursed for all wage loss suffered."

OPINION OF BOARD: The dispute culminating in this Claim centers on the intent of Carrier management as related to events on October 6, 1977. On that date the Claimant, as a member of a Rail Gang, reacted negatively to admonishment by his supervisor for he and the other members of his crew to pick up the pace of work. (This crew was removing tie plates and plugging the holes as part of the gang's overall responsibility to replace jointed rail with ribbon rail.) The Claimant advised he could not work any faster than he was going and asked for a transfer to another crew -- a request that was denied. His continued negative response to a return to work at a stepped-up pace drew a decision from the Carrier to stop his time. Later on that day, he was issued a letter which identified his earlier actions as a refusal to work, as having walked off the job and as having quit. Subsequent discussions and correspondence resulted in the Carrier's planned termination of the Claimant's service to be altered in favor of permitting him to return; the 30-day period he was out of service was not to be compensable. Thus, the dispute arises over the period of time the Claimant was out of service which the Organization considers a disciplinary suspension, without pay, and which the Carrier contends resulted from a voluntary withdrawal from service and ended by a display of the Claimant's desire to return to work.

This case turns on the intent of the Claimant and actions of Carrier supervision on October 6, 1977. Obviously this Board cannot divine the actual events of that confrontation. Thus, it is obliged to assess the testimony of the principles involved -- the Claimant and two (2) supervisors. In so doing, we are led to the conclusion that the basis for the Claimant's termination of service arose out of his unwillingness to react positively to management's

admonition to pick up the pace. If the Claimant was physically incapable of performing the work as assigned, he would have been better advised to bring this to the attention of management at the outset of work that day. Instead, the discussion with the foreman came in mid-afternoon. While the loss in compensation to the Claimant as a result of this incident is considerable, we find no reason to intervene since this Board views the events of October 6, 1977 not as a disciplinary action, but rather as an acquiescence on the Carrier's part to the Claimant's intent to withdraw from service rather than pick up the pace of work. As such, however, we conclude that his personnel file and work record should not reflect or imply any disciplinary action. The period the Claimant was out of service should be credited to him for seniority purposes and should only be cited as a time period for which no pay was received.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim disposed of in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauline
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.

