

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23909  
Docket Number CL-23778

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
                              { Freight Handlers, Express and Station Employees  
                              { Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9290)  
that:

(1) Carrier violated the Agreement at Baltimore, Maryland, when it suspended from service Mr. C. E. Wietscher, Extra Clerk, for thirty (30) days, beginning February 4, 1978 through March 5, 1978, when he declined to physically check tracks, unaccompanied, to avoid jeopardy to his personal safety, and

(2) Mr. Wietscher shall be compensated for all wage losses between February 4, 1978 and March 6, 1978, the period of suspension, and his record be cleared of charges in connection therewith.

OPINION OF BOARD: The Claimant was suspended for a period of thirty days for his refusal to check the yard tracks at Curtis Bay unless someone was assigned to accompany him on this mission. There is no question but that the instructions were clear, that they were understood by the Claimant, and that he refused to follow them unless someone went with him. The Claimant received his instructions first from the Assistant Chief Clerk and, in turn, from the Assistant Manager all with the threat of discipline if he did not comply.

There is also no question but that, standing alone, the refusal to comply with instructions is subject to disciplinary action. An orderly process dictates that an aggrieved employe should obey the instructions and grieve later, however, in Award 22525 the additional element of safety hazard was raised wherein the award provided as follows:

"It is well settled that employees must comply with instructions of superior officers and then complain later if they think they have been mistreated, except where a real safety hazard may be involved."

The safety hazard alleged herein by the Claimant is the requirement to visit a yard to inspect tracks at 1:30 in the morning in a dark and alleged dangerous area unaccompanied by a fellow employe. The Carrier alleges that the area is safe and no such extra employe is involved.

The Claimant, having failed to carry out the instructions of his supervisor, must carry the burden of proof to indicate why it would be dangerous to enter this area alone. The Claimant has pointed out that 85 employes had signed a document delivered to the Division Manager four months

prior to this incident pointing out unsafe working conditions at various locations including the area where the Claimant was to be sent.

It was also pointed out that in 1974, there had been an injury to a fellow employee who was assaulted and robbed in this area. The Claimant pointed out that five days before his refusal to enter the area unaccompanied, he had been dispatched to accompany a fellow employee who was to check the same area. The record indicates that because of the nature of these areas, that there had been a practice of sending two employees to check tracks in isolated areas but the record further shows that the Division Manager attempted to stop this practice by placing the following in the Assistant Chief Clerk's log book on October 7, 1977:

"C. McAbee, per Division Manager. There is no area where it is unsafe to send a checker. If a clerk refuses, log the incident. Action will be taken. This is our instructions as of this period."

A reading of the record in its entirety indicates that there was certainly cause for the Claimant to be concerned for his safety if he followed the instructions given to him on the evening of the incident. Whether there is sufficient basis for his then refusing to comply with the instructions must be decided by taking into account all of the facts involved. In this regard, it is significant that there had been some incidents in these remote areas and that a substantial number of employees had complained about the danger in these areas. In weighing the factors in this matter, we are impressed that this was not an absolute refusal by the Claimant, but rather one which was qualified. The Claimant was willing to enter the area, at least if there was the protection of two persons entering the area at the same time. We don't find here an absolute refusal on the part of the Claimant, however, the Claimant in refusing to follow an order does so at his own risk; namely, that of being able to establish clearly that a danger did exist. It is difficult to evaluate the real extent of the danger on the particular evening when the refusal was made, so that we cannot say that there was not a basis for discipline to be imposed by the Carrier.

However, under all the factors involved including many of the uncertainties, it is clear to us that a thirty-day suspension is excessive even if the fears of the Claimant were unfounded. The Carrier has a duty under these circumstances to communicate with all the employees involved that it is going to enforce its change in policy with a complete explanation as to why it is satisfied that the danger which it once recognized by sending employees out in pairs no longer exists. Certainly there was enough in the way of extenuating factors which could give the Claimant some cause for concern. Under these circumstances, we find that any suspension in excess of three days is not warranted.

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 Agreement was violated.

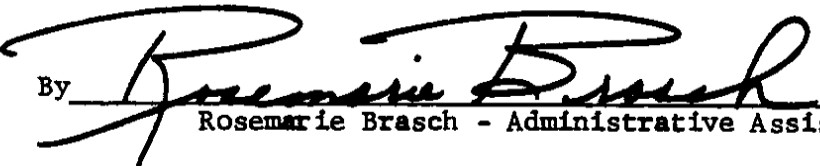
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June 1982.