

CH JEP
Jm
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24104
Docket Number MW-24104

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Detroit, Toledo and Ironton Railroad Company

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

(1) The suspension of thirty (30) calendar days imposed upon Trackman Jeffery Crumpton for alleged insubordination on May 31, 1979 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement.

(2) Trackman Jeffery Crumpton shall now be allowed the benefits prescribed in Agreement Rule 34(e).

OPINION OF BOARD: Following an investigative hearing, Claimant was assessed a 30-calendar-day disciplinary suspension for being "insubordinate". The incident under review was the Claimant's alleged refusal to follow proper work orders of his supervisor on May 31, 1979.

The Organization raises a procedural objection identical to that in Award No. 24080, in reference to multiple roles of the hearing officer. The Board finds that the resulting hearing was fair and proper, for the same reasons as expressed in Award No. 24080.

The record shows that the Claimant was particularly unresponsive to his Foreman's direct instructions to carry hooks used in track repair. Based on the testimony of the Claimant and the Foreman, the Carrier properly concluded that the Claimant had been insubordinate. The Claimant, however, was not shown to refuse to perform his assigned task completely but rather disputed the manner in which it was to be done. In the ongoing employer-employee relationship, such conduct need not be tolerated, and disciplinary action was warranted. The Board finds, however, that the 30-day penalty, absent demonstrated previous disciplinary history, was overly severe. The Board finds that a 15-day penalty would be appropriate and determines that the Claimant shall be made whole for the remaining 15-day penalty.

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

The the Agreement was violated.

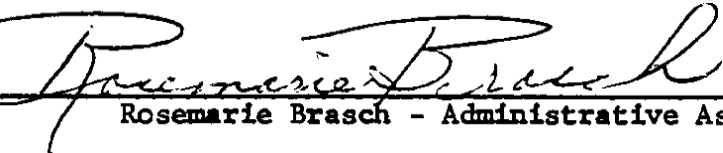
A W A R D

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 14th day of January 1983.

