

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24320
Docket Number MW-24095

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Chesapeake and Ohio Railway Company

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

(1) The dismissal of Track Laborer R. H. Ward for alleged insubordination on February 15, 1980 was unwarranted, without just and sufficient cause and on the basis of unproven charges (System File C-D-956/MG-2798).

(2) Track Laborer R. H. Ward shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On February 21, 1980, the Claimant was directed to attend an investigation to be held March 3, 1980. The letter read in pertinent part as follows:

1 "You are charged with being insubordinate when you refused to perform service as instructed by your foreman at about 10:15 a.m., Friday, February 15, 1980, at Mile Post 387.1, Claremount, West Virginia."

The investigation was held May 19, 1980, after several postponements. Subsequent to the investigation, the Carrier dismissed the Claimant. The Carrier argues that the investigation clearly established that the Claimant refused to comply with orders of a foreman to assist in replacing a new rail being worked on by the Claimant's crew. The testimony cited by the Carrier includes an admission by the Claimant that he refused to obey the orders.

The Organization contends that the Claimant's refusal to assist in lifting the rail was justified because he perceived an immediate danger to himself. The Claimant testified that after the first attempt to move the rail, he refused to make a second attempt due to "safety precautions". The Organization also argues that the foreman did not instruct or insist that the Claimant remain on duty but clearly presented an option to him to comply or leave. In view of the nature of the foreman's instructions, the Claimant was left with the impression that he could freely exercise his own judgment and preference in the situation. In this respect, the Organization suggests that the Claimant cannot be considered insubordinate.

In reviewing the record, it is the Board's conclusion that there is substantial evidence to support the Carrier's decision. There is no basis for the Organization's "safety" defense or their contention that the nature of the foreman's directive excuses the Claimant's behavior. In respect to the "safety" contention, the Board has recognized in the past that a "safety exception" does

exist to the general "comply now, grieve later" rule which governs acts of insubordination. The "safety exception" excuses employes from compliance with orders where there is a reasonable belief that at the time of the order that compliance would injure life or limb. However, in this case, the Claimant having invoked this defense has not sustained the burden of proof of showing that there was a reasonable basis for his refusal in respect to safety considerations. There is abundant testimony in the record that showed that moving the rail in question in the manner prescribed by the foreman was standard practice. There is no evidence of special circumstances or facts which would have made this standard practice dangerous.

In respect to the Organization's position relating to the nature of the foreman's directive, we note Third Division Award No. 22763 which held that such a directive does not preclude a finding of insubordination. It was stated in the Award as follows:

"We are inclined to agree with the Carrier that the work site is certainly not the appropriate place to conduct a debate, and that when a reference is made to either perform work or 'go home', the latter alternative is not understood to be a freely given basis to 'take the day off'."

In respect to the quantum of discipline, this Board has held many times that insubordination of this nature is grounds for dismissal. As it was stated in Third Division Award 21059:

"The rule of thumb here is, 'Work now, grieve later.' The work place is not a debating society, where employes may challenge the orders of management through insubordinate action. Whenever employes refuse to follow a proper order of supervision, the Carrier is placed in a position where it must immediately take steps to eliminate such insubordination, or else the insubordination will create havoc throughout the work gang. Consequently, it is well established that dismissal is not inappropriate in cases of insubordination. (Awards 20770, 20769, 20651, 20102, 18563, 18128, 17153, 16948, 16704, 16347, 16286, 16074, 15828, 14273, and 14067)."

It is noted that the Claimant is a relatively short-time employe and that there are no compelling mitigating circumstances that serve to move us to give him another chance.

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

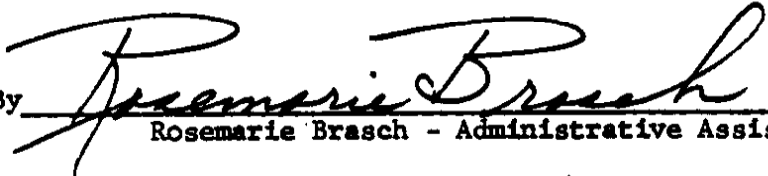
That the Agreement was not violated.

A W A R D

Claim denied.

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 April 1983.