

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24437
Docket Number MW-24562

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Ann Arbor Railroad System
(Michigan Interstate Railway Company - Operator)

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

(1) The ninety (90) days of suspension imposed upon Trackman L. O'Dea for alleged insubordination and 'quarrelsome behavior toward Chief Engineer R. A. Paul' on February 15, 1981 was without just and sufficient cause and on the basis of unproven charges.

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On February 17, 1981 Claimant, Lawrence O'Dea was notified to attend a formal investigation on February 25, 1981 for alleged insubordination and quarrelsome behavior. After postponements, the investigation was held on March 3, 1981. On March 10, 1981 Claimant was notified by the Carrier that he had been found guilty as charged and that he was assessed a ninety (90) day actual suspension.

A review of the record shows sufficient substantial evidence to warrant conclusion that Claimant O'Dea was guilty as charged when he refused to respond to questions put to him by Chief Engineer R. A. Paul and when he used profanity at approximately 12:30 AM on February 15, 1981. Testimony from the investigation shows, however, that Engineer Paul's behavior during this whole incident was also not without blemish and that the manner in which he posed the questions to Claimant O'Dea were less than totally polite and civil. This does not diminish the impertinence of Claimant's behavior to Carrier officer, but it does permit a reasonable understanding of it in the proper context. The fact of the matter is that both the Claimant and Engineer Paul were understandably fatigued at the time of the incident in question from having covered their assignments and the record shows that they both engaged in behavior which was less than correct in terms of normal employer-employee relations. The Board has gone on record to the effect that cooperation and civil conduct in the workplace is the responsibility of both the employer and the employee (Third Division Award 21810 inter alia.).

With respect to the quantum of discipline given to the Claimant, this Board has also held on numerous occasions that the role of discipline should not only be punitive, but that it should also provide corrective and training

measures (Second Division Award 6485; Third Division Awards 5372 and 19037). In view of the demeanor of Engineer Paul as party to the instant incident, and in view of Claimant's past record (Third Division 23508 and 22320) which is without blemish, the Board can only conclude that the quantum of discipline imposed in the instant case exceeds reasonable bounds.

The Board rules, therefore, that the ninety (90) day actual suspension be reduced to a thirty (30) day actual suspension, that Claimant be made whole and compensated for all time held out of service during the other sixty (60) days, and that this action of the Board be duly noted in Claimant's personnel file.

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 discipline was excessive.

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 15th day of June 1983.

*Rec'd
9-7-83*