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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24501
Docket Number MW-24557

George V. Boyle, Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE:

(Seaboard Coast Line Railroad Company

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

(1) The thirty (30) days of suspension imposed upon Trackman L. R. Chapman for alleged violation of 'Rule 18' on August 13, 1980 was without just and sufficient cause and on the basis of unproven charges. (System File 37-SCL-80-125/12-39 (80-72) G).

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

OPINION OF BOARD: The claimant, an employee of about eight (8) months service with the Carrier, was working on August 13, 1980 as a trackman engaged in transporting a portable supply car while the crew was relaying a switching lead at North Collier near Petersburg, Virginia.

The Claimant was directed to dismantle the car into its two pieces and to move it over the distance where the rail was to be matched. He complied with this order with respect to one-half the car but declined to do so with regard to the other half.

The Claimant asserts that his failure to obey this order is attributable to a back injury which he sustained while lifting the first half of the car and his natural disinclination to risk further injury.

The Carrier's representative, Roadmaster W. L. Farless, testified that the Claimant had moved the second half of the car a short distance, thrown it down and then walked away, allegedly to seek help in moving and reassembling the car. Farless testified further that, "I said it was a Nolan one man supply car and it was designed for one man to transport and take apart and put back together and he was to pick it back up and carry it the rest of the way the other 10 feet and put it back on the tracks . . . He continued to walk . . ."

Farless continued his testimony to say that after calling as witness James Green, an Apprentice Foreman, he repeated his order, at which time the Claimant answered "I'm not going to do it." Asked, "'Leland are you refusing to work.' He said 'I am refusing to work'".

Farless testified under questioning by R. L. Dean, Conducting Officer,

"Q. Did he say anything then about having a hurt back and needing assistance?

A. No sir he didn't

Q. Did he at anytime prior to the time that Mr. Green got there say anything about having hurt his back?

A. No sir he did not.

Q. Mr. Green was standing there. Would you tell us again what his words were as far as hurting his back"

A. After I told him I was going to take him out of service and we was to go over to the yard office I asked him why he would not move the push car and he said I might hurt my back.

Q. Did you take this to mean that he had already hurt his back or he might hurt it if he picked the second half up?

A. That he might hurt it if he picked the second half up.

Q. And will you repeat again what was said between Mr. Chapman and you on the way to the yard office?

A. Yes sir he said you can shut your g-d d---n mouth since you are nothing more than a Roadmaster."

Apprentice Foreman Green's testimony corroborates Roadmaster Farless with respect to the claimant Chapman's refusal but not for the reason given: ". . . Mr. Farless called me for a witness for him. He asked Mr. Chapman to put 1/2 of push car and he told him he won't going to do it.

Q. By him you mean Mr. Chapman told Mr. Farless that he wasn't going to do it?

A. I turn and ask him do you know what you are doing by not putting it on and he said yea. Mr. Farless told him he was going to take him out of service and at that time Mr. Farless ask him why won't he going to put it on. He say he believe he might have hurt his back and that was all. . . .

Q. Did you take that to mean that he might have already hurt his back or he might hurt it if he picked the car up and moved it?

"A. I really didn't think about it. I thought he might hurt it when he moved the other piece or part of it, or whatever. I wasn't up there at the time but that is what I thought have meant."

Mr. Chapman, on his own behalf, testified that, "I twisted or pull something in my back and that's when I dropped the dolly car and ask Mr. Farless if I could get some help to pick up or carry the dolly car the rest of the way because I thought I hurt my back . . ."

"Q. When you and Mr. Farless left from where Mr. Green was and started walking up to Collier yard what conversation did you have with Mr. Farless then"

A. None whatsoever . . ."

From the above testimony there is adduced clear, convincing and probative evidence that the Claimant did refuse to obey a direct order.

There is a credibility question involved as to whether the Claimant indicated that he had actually injured his back or if he claimed that he "might hurt his back", lifting the second piece of the car and thus mitigate his refusal. This question has been resolved to the satisfaction of the hearing officer against the claimant and it is not for this Board to rule on credibility questions nor to substitute its judgment for that of the hearing officer in this regard.

Moreover the same principle applies with respect to the evidence of the Claimant's use of profane, abusive and insubordinate language.

Insubordinate actions and language are serious offenses for which dismissal is not an excessive penalty. In this case a thirty (30) day suspension is not unduly harsh or unreasonable and thus the Board finds no basis to overturn the Carrier's action.

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:

Nancy J. Dever
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.

