

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24522
Docket Number MW-24401

Herbert L. Marx, Jr., Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

(1) The five (5) calendar days of suspension imposed upon Repairman Paul Spoljaric for alleged insubordination on August 23, 1979 was without just and sufficient cause and on the basis of unproven charges (System Docket 545).

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

OPINION OF BOARD: Following an investigative hearing conducted in a fair and proper manner, the Claimant was subject to a five day disciplinary suspension for "failure to comply with instructions" given to him by an Assistant Supervisor. Claimant, a Repairman, was working with another employe, a Welder, in the repair of a ballast regulator.

While the Claimant was engaged in such work, he was instructed by an Assistant Supervisor to leave this work to drive a truck to obtain fuel to enable the Welder to continue his work. The Assistant Supervisor did not instruct the Welder to stop work.

The Claimant refused to obey the order and, in the words of the Assistant Supervisor quoting him, the Claimant "Said as long as there's a welder out here I have to be out here with him...". The Carrier alleges that the Claimant, in his refusal to obey, may have had other motives than his concern for being with the welder.

The fact remains, however, that the issue of safety was clearly present.

Insubordination, expressed frequently as the refusal to obey an order from proper authority, is a serious matter. Charges for such, when proven, properly result in severe disciplinary action. In this instance, however, one of the classic exceptions is involved -- the safety of the employe involved or that of another employe. There was a legitimate concern on the part of the Claimant in reference to the hazard of the repair work then in progress which, as he forcefully explained to the Assistant Supervisor, required two employes for proper safe operation.

The Board does not perceive a hard-headed refusal to obey an order. Under the particular circumstances involved here, the principle of concern for employe safety must take precedence over another principle of obeying first and grieving later.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September, 1983.

