

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24705

Docket Number MW-24571

Martin F. Scheinman, Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE:

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(The Colorado and Southern Railway Company

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

(1) The five (5) days of suspension imposed upon Extra Gang Foreman J. E. Garcia and the censure placed upon his record for alleged violation of "General Rule A" was without just and sufficient cause, unwarranted, on the basis of unproven charges and in violation of the Agreement (System File C-1-81/MW-434).

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

OPINION OF BOARD: Claimant, Extra Gang Foreman J. E. Garcia, after investigation, was suspended for five days as a result of an incident on December 11, 1980. Specifically, Claimant was found guilty of failing to comply with the instruction of a supervisor in regard to a track relay project at Mile Post 148.

The Organization contends that Carrier's imposition of discipline was improper. It asserts that Claimant was never instructed in any clear way to commence the rail relay at the east end of the project. The Organization asks that Claimant's record be cleared of all reference to this matter and that he be compensated for all wages he lost.

Carrier, on the other hand, insists that Claimant was directed to begin the rail relay at the east end working west. It insists that Claimant improperly took it upon himself to begin the rail relay near the end of the bridge working west to east. As such, Carrier argues that Claimant was insubordinate justifying the imposition of the penalty of a five day suspension.

On the morning of December 10, 1980, Roadmaster A. Kaparos instructed Track Supervisors T. J. Bach and V. E. Weese to begin the rail relay at Mile Post 148 going east to west (Claimant had received permission to be absent on December 10th). When Claimant returned to work on December 11th, he told Bach that he would start from the west end of the relay.

Bach told Weese of Claimant's intention. Weese called Claimant and told him that the relay should begin at the east end.

The transcript establishes, without any doubt, that Claimant failed to follow the directions of both Bach and Weese. While the Track Supervisors could have better explained their reasoning to Claimant for beginning the relay from the east, the fact remains the Claimant was obligated to follow his supervisors orders. It is fundamental that, except in circumstances not present here, an employee is obligated to obey a supervisor's instruction. No employee may resort to self help. Claimant's failure to adhere to the instructions of his supervisors subjected him to appropriate disciplinary measures.

As to the penalty imposed, we do not believe that a five day suspension was arbitrary, capricious or excessive. Thus, we will deny the claim in its entirety.

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

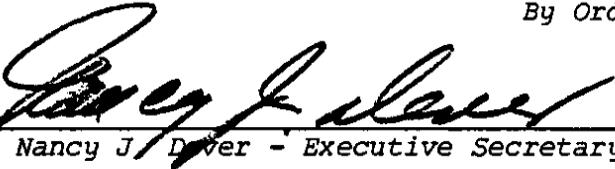
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 9th day of March, 1984

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