

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24890
Docket Number MW-24850

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Chesapeake and Ohio Railway Company

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

(1) The thirty (30) days of suspension imposed upon Messrs. G. Wright, R. McGlone, J. Smith, R. King, G. Sanders and D. Eastham for alleged "refusal to perform service" on May 28, 1981 was without just and sufficient cause and on the basis of unproven charges (System File C-D-1159/MG-3182).

(2) The claimants' records shall be cleared of the charge leveled against them and they shall be compensated for all wage loss suffered.

OPINION OF BOARD: Six (6) Claimants, all of whom are Trackmen, were regularly assigned to the Carrier's Super Tie Force in Paintsville, Kentucky. They were suspended for thirty (30) days for "refusal to perform service."

On May 28, 1981 the Claimants installed cross ties until Foreman Ginn ordered that work be suspended because of heavy rain. The downpour continued for one-half hour at which time Foreman Ginn ordered the Claimants to resume work. Claiming illness, they refused Foreman Ginn's order, at which point Regional Production Supervisor Rippeth ordered the Claimants to board the bus so that he could talk to them. After entering the bus, Foreman Ginn again ordered the Claimants to return to work and again they refused to do so, alleging illness.

The Board concludes that the record does not establish that the resumption of work by the Claimants on May 28, 1981 would have been detrimental to their health. None of the doctor's certificates submitted by the Claimants reveals the nature of the illness they suffered on May 28, 1981. On their face, several of the doctor's certificates do not constitute probative evidence of illness on the day in question. For example, one certificate provides that the Claimant told the doctor he had been ill on May 28, 1981; another certificate merely states: "off work till 5-29-81." At any rate, the doctor's certificates must be weighed against the simultaneous illness of the six (6) Claimants on May 28, 1981. As stated in Third Division Award No. 19708:

"It would strain the credulity of reasonable men to believe that sudden illness of all the employees was coincidental."

Consequently, the physician's notes cannot be given much, if any weight.

The Board concludes that the Claimants refused "to perform service" in defiance of a direct order by Foreman Ginn on May 28, 1981. The offense by the Claimants could easily have been avoided by complying with the well established and sensible concept, which is aptly phrased as "obey now, grieve later."

In light of the severe weather on May 28, 1981 the Board is of the view that the penalty imposed against the Claimants was excessive. However, it is also important to impress upon the Claimants the seriousness of their conduct. Accordingly, the Claimants shall be compensated for wages lost in excess of fifteen (15) days suspension.

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 Employees involved in this dispute are respectively Carrier and Employees 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

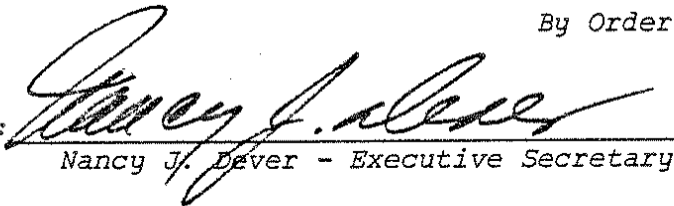
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1984.