

Corrected
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25014
Docket Number MW-24710

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

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

(1) The sixty (60) days of suspension imposed upon Track Laborer L. Barnard for alleged insubordination on May 21, 1981 was excessive and an abuse of justice and discretion by the Carrier (System File TRRA 1981-9).

(2) The claimant shall be compensated for all wage loss suffered including overtime pay."

OPINION OF BOARD: The Claimant was working as a Track Laborer with a System Tie Gang on May 21, 1981. The foreman of a joint gang in the area noticed that he was not wearing a safety helmet and told him to put it on. The Claimant refused, responding that he would do so when others in that foreman's gang also were directed to wear their helmets. The foreman, saying he would attend to the others later, repeated his order to the Claimant. Then, as the Claimant moved to pick up the helmet, the foreman remarked: "No, it's not going to do you any good now because I am pulling you out of service". The Claimant was thereupon suspended because, as the foreman testified, he was not wearing his hard hat. He was subsequently charged with insubordination and, after a hearing, he was assessed a 60-day suspension.

The Organization protests the treatment of the claimant on the principle ground that his summary removal from service violated his right to a prior hearing under Rule 24(a) of the Agreement. It argues that the Claimant's failure to wear his helmet in the particular circumstances cannot be considered a "sufficiently serious" offense justifying his immediate suspension under the exception described in Rule 24(a). The Organization urges secondarily that, even if the Claimant could be found guilty of any misconduct, the penalty assessed was excessive and beyond the Carrier's proper discretion.

The Carrier justifies both the summary removal and the penalty on the ground that the Claimant was guilty of blatantly grave and serious misconduct demonstrating a generally insubordinate attitude on his part.

It is an undeniable fact on this record that the Claimant did not wear his helmet at the time and that, by his own admission, he deliberately did not respond promptly to a foreman's order to put it on. Thus the primary question before this Board is the propriety of the immediate suspension without notice and hearing.

This and other Divisions of this Board have interpreted the "sufficiently serious" exception to Rule 24(a) to mean that an employe may be summarily removed from service if it can be shown that his continued presence on the property would endanger the safety of the operation, interfere with the orderly performance of work, or disrupt the administration of discipline. (See, for example, Award 23412 of the Third Division).

The Claimant's offense cannot reasonably be said to fall within any of the reasons deemed acceptable under the Rule 24 (a) exception. The evidence indicates a clearly less serious kind of infraction. The essence of the insubordination charged was that he was not wearing his helmet at the particular time. It appears that his slow response to the foreman's order was due to his resentment at what the two gang foremen acknowledged to be lax and uneven enforcement by them of the rule. It is also clear that the claimant was understandably unsure as to whether a foreman other than his own supervising another gang had the authority to direct him to wear the helmet or remove him from service.

The Board concludes on the entire record that the Carrier violated Rule 24(a) when it took the Claimant out of service without a prior hearing. This significant procedural error cannot, however, totally excuse the Claimant's offense. Failure to observe safety rules may endanger the employe himself and others. In the opinion of the Board, the appropriate penalty on this record for the Claimant's offense of failure to wear his helmet is a suspension of five days.

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

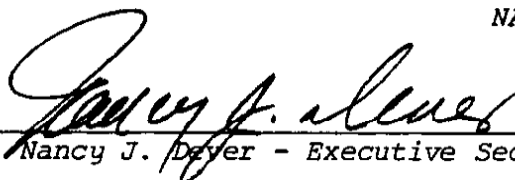
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

