

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25080
Docket Number MW-24819

George V. Boyle, Referee

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

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

(1) The seventy (70) days of suspension imposed upon Trackman F. L. Marsh for alleged insubordination on April 8, 1981 was without just and sufficient cause (System File C-D-1160/MG-3157).

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

OPINION OF BOARD: The Claimant was an employe of brief service when on April 8, 1981 he was suspended for insubordination in that he failed to carry out the direct order of his foreman.

At a hearing on the property the Claimant's foreman testified, "on the morning of April 8, 1981, I rode down on the first bus. The rest of the anchor spiking crew was on that bus. We were heading back to anchor spiking. I saw the second bus coming around the side of the track. I stopped it to see if Marsh was on it. He was and I asked him 4 or 5 times to get off the bus and go back to anchor spiking. He sat there looking out the window. Foreman Whipple was standing in front of the cart so as I got off the bus I pointed Mr. Marsh out to him then I called Mr. Schmuker and told him what happened."

This account is substantiated by the testimony of Foreman Whipple who was certain that the Claimant heard the directions and ignored them. Further he testified that as the Claimant's foreman left the bus, Marsh waved good-bye causing laughter and derision among the other men on the bus.

Further, the Rail Gang Supervisor testified that the Claimant, "turned his back to me and gave me the opinion that he did not want to discuss it", when the Supervisor questioned him regarding the refusal to obey direct orders.

The Claimant denies the allegation while acknowledging that his Foreman had called his name and that he had responded, making his presence known. But he asserts that no order was given and that after talking a while with another Supervisor, Mr. Sullivan he did go back to anchor spiking.

But the bulk of his testimony is related to a dispute he pursued with Mr. Sullivan relative to his request to run the machines. Moreover he alluded to another incident in December 1980 which resulted in a forty-five (45) day suspension for the same offense involving Mr. Sullivan.

The Carrier concluded that an act of insubordination had been committed by the Claimant by refusing to obey a direct order and accordingly suspended him for seventy (70) days.

The Organization alleges that the hearing was not impartial since the Claimant's witnesses were not afforded the opportunity to testify. They further assert that the hearing officer was not impartial, that conflicts in testimony negate the testimony of the Carrier's witnesses and that the Carrier has failed in sustaining the burden of proof.

The Board must disagree on all counts.

With respect to the Claimant's witnesses, he was asked,

"Q. Do you desire any witnesses?

A. No."

This is followed by a statement from his Representative, Mr. Cook, "We would like to hold the witnesses open at this time account there are several that may be coming, if they show up during the course of the investigation, we would like to have them admitted. However, if they do not show up we will proceed without them."

Having agreed to proceed without any of Claimant's witnesses there cannot now be a valid claim that the lack of the witnesses' presence was an impediment to a fair hearing.

With respect to the partiality of the hearing officer, there is no evidence or testimony that would warrant such a conclusion.

Such conflicts in testimony as exist between Carrier's witnesses are of minor consequence and the crux of their reports are consistent in upholding the validity of the charge of insubordination. Thus, the Board holds that the Carrier has sustained the burden of proof and will not disturb the penalty for such a serious infraction.

The Carrier has a right to expect and demand obedience to a legitimate order. The axiom of "work now and grieve later" is too well known, understood and acknowledged to need elaboration here.

The claim is denied.

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

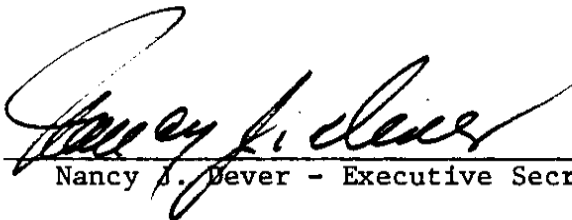
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.