

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25424
Docket Number CL-25332

John E. Cloney, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9799) that:

A. The Carrier violated the terms of the Clerks' Agreement and supplements thereto, when on January 25, 1980 its officers wrongfully, arbitrarily and capriciously administered discipline of thirty (30) days straight time off with actual suspension beginning January 12, 1980, as a result of a Board of Inquiry held January 18, 1980, and

B. That the Carrier shall be required to cancel such discipline and to immediately reinstate Mr. Young with all rights unimpaired, compensating him for all time lost from the date he was originally held out of service.

OPINION OF BOARD: After an investigation conducted on January 18, 1980, Claimant Glen Young, a Portable Equipment Operator (PEO) was suspended for thirty days as "It has been found that you failed to operate a fork lift truck as instructed and failed to properly perform duties as assigned".

The incident arose when Supervisor D. J. Schisler instructed Claimant to use fork lift truck #62 after his assigned truck broke down. Truck #62 is held in reserve and not regularly assigned. Claimant complained Truck #62 was unsafe in that it leaked gas and said he wanted to speak with the Safety Committee. The two then went to Schisler's office and were joined by Platform Foreman Jeffrey, General Foreman Songer and P.E.O. Earwood. Then they all went to where Truck #62 was parked and the vehicle was started. Schisler could detect no fumes nor could Jeffrey nor Songer. Earwood made no response when asked if he detected fumes. Schisler again instructed Claimant to operate the truck and Claimant again stated he wanted the Safety Committee. Schisler replied they were a Safety Committee and repeated his instructions several times with Claimant each time responding he wanted a Safety Committee. Schisler then removed Claimant from duty. Schisler, Jeffrey, Songer and Earwood are Safety Committee members.

Another employe was then assigned to drive Truck #62. He too complained of fumes, but did operate it. Approximately six days later the vehicle was found upon inspection to be unsafe, but the examiners were unable to state what its condition would have been on the date of the incident.

Claimant's request that the vehicle be examined was not unreasonable. We note however that various Carrier personnel and a Union Representative, all of whom were Safety Committeemen, did examine the vehicle. It was only after such examination and repeated instructions to operate the vehicle that Claimant was relieved. While the inspection may not have been as comprehensive as Claimant wished, he should have followed instructions and grieved at that point. His failure to do so merited discipline. However we do find that as Claimant's original request was reasonable and concerned a matter as vital as safety the penalty assessed was excessive. Accordingly, we will reduce the suspension to ten 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 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

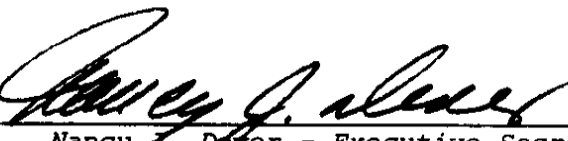
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.