

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25435
Docket Number MW-25307

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard System Railroad

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

(1) The ten (10) calendar days of suspension imposed upon Bridge Helper W. F. Jordan for alleged violation of "Rule 18" on December 9, 1981 was without just and reasonable cause [System File C-4(13)-WFJ/12-39 (82-1103)].

(2) The claimant's record shall be cleared of the charge leveled against him, he shall be compensated for all wage loss suffered, including wage loss suffered attending the hearing, and he shall be reimbursed for all expenses incurred by him while attending said hearing.

OPINION OF BOARD: Claimant was subject to an investigative hearing on two separate notices of charges. By agreement, both notices of charge were heard in a single investigation. The first charge concerned alleged "insubordination for failure to report for work following an injury. Following the hearing, the Carrier determined that such charge was not justified, so the Board need not be concerned with the substance of that charge.

The second charge also concerned "insubordination" in connection with the Claimant's refusal to sign a copy of the letter containing the first charge. The second charge read in pertinent part as follows:

"On Wednesday, December 9, 1981, Assistant Supervisor Bridges and Buildings H. T. Jeffers personally delivered to you a letter charging you with two rule violations and setting up formal hearing for same.

Mr. Jeffers instructed you to acknowledge receipt of the letter after you read it by affixing your signature on a copy of the letter indicating receipt of same in which you refused to do so.

By your refusal to follow the reasonable instructions of Assistant Supervisor Bridges and Buildings Mr. H. T. Jeffers you are hereby charged with violation of that part of Rule 18 of the Safety Rules for Engineering and Maintenance of Way Employees that reads --
'Insubordination' --- will subject the offender to dismissal..."

In resolution of this matter, it is important to consider the full text of the first charge letter which the Claimant refused to sign. It reads as follows:

"You were working as Bridge Helper on Bridge Gang 5588 on Monday, November 30, 1981, when the dog you were using slipped off timber hitting you on your cheek. You were taken to Doctor Phil Rhiddlehoover in Hurtsboro, Ala. who examined you and issued Form 40 and note authorizing you to return to your job. You failed to report for work on Tuesday, December 1 and Wednesday, December 2, 1981.

I went to your home on the afternoon of December 2, 1981 and found you at home. You were reminded that the doctor had given you permission to return to work. I instructed you to return to your assignment immediately in which event you didn't report back to work until Monday, December 7, 1981.

This is to advise that you are charged with violation of Rule 17-b of the current working agreement between Seaboard Coast Line Railroad and its Maintenance of Way Employees and that part of Rule 18 of Safety Rules for Engineering and Maintenance of Way Employees reads -- Insubordination -- will subject the offender to dismissal.

A hearing will be conducted in the Assembly Room of the Division Office Building located at 601 E. Liberty Street, Savannah, Ga. on Friday, December 18, 1981 commencing at 10:00 A.M.

You will be present to answer the charges and may be represented by the duly accredited representative of the employees. You may have present any witnesses you desire. It will be your responsibility to arrange for their presence.

Your personal record file will be subject to review in this hearing."

This letter was hand delivered to the Claimant by the Assistant Supervisor, Bridges and Buildings after the Claimant had returned to work following his absence owing to the on-duty injury. While the text of the letter was read into the record of the investigative hearing, a copy of the letter itself was not made a part of the record before the Board. Thus, there is no basis to dispute the Organization's contention that the letter did not include a signature line for the addressee to "acknowledge receipt" of the letter. Rather, the Assistant Superintendent simply ordered the Claimant to send one letter.

The Claimant's reluctance to sign the letter, according to his testimony, was that in doing so he might be agreeing to the charge of failing to report to work the previous week as he had been ordered. In examination by the hearing officer, the Assistant Superintendent described the incident as follows:

"A. I called Mr. Jordan off -- off to the side to where my truck was parked, I had my letters and so forth in the truck and I told him I had some letters here, I had one for him and I had one I wanted him to read and acknowledge. It was a letter of charges and he read some of it and says it wasn't right, that the letter wasn't right and he wasn't going to sign it, he wasn't going to acknowledge it. Well, I told him I was instructing him to sign the letter and he says he wasn't going to sign because it wasn't right. Well, I told him it really don't make any difference whether its right or wrong, I'm instructing you to sign the letter. I said if we have a hearing or something, have a hearing, I said that we can talk about that, that can be discussed in the hearing but he refused to sign -- acknowledge the letter."

Under examination by the Organization Representative, the Assistant Superintendent put it this way:

"A. Well, I called Mr. Jordan over to the truck as I had the letters in the truck and I told him I had a letter for him, I had his personal letter and I had a letter I wanted him to read and sign it or acknowledge it and when I presented it to him and gave it to him, he read it, read a little bit then he says it wasn't right and he was not going to sign it or acknowledge it.

Q. Did you get the distinct impression that Mr. Jordan was not or did not sign it because he felt the letter was wrong?

A. The reason he did not sign it?

Q. Yes.

A. Well, I really not altogether, I don't think because I told him, I tried to explain it to him that whether he thought the letter was right or wrong that I'm instructing him to sign it and if its a hearing or anything like that we could talk about that in the hearing but I told him that I was instructing him to sign the letter. And I also told him that by his refusing to sign this or acknowledge this letter, he could be charged for not following instructions."

Notably lacking in the Assistant Superintendent's approach to the Claimant was the simple expedient of saying to the Claimant something like, "by giving me your signature, all you are saying is that you have received the letter and nothing more." Instead, the message was clearly conveyed that he was to sign the letter (despite the expressed fears of the Claimant, perhaps through unfamiliarity with such documents) or be "charged" for not following instructions.

By refusing to do as instructed, the Claimant was, technically, insubordinate. This situation, however, is hardly of the same degree of insubordination as the direct refusal of a work order or demonstrating open disrespect to a supervisor. Whether the letter was signed by the Claimant or not, the investigative hearing would have gone forward. The Board finds believable the Claimant's expressed uneasiness as to the consequences of signing the letter.

Under these circumstances, the Board finds a disciplinary penalty unduly harsh. A reprimand would have had adequate effect to avoid a repetition of such an incident. If the Claimant was at fault in not following instructions, the Assistant Superintendent also was less than precise in assuring the Claimant as to the reason for the signature. Suspension is reduced to a reprimand and Claimant shall be reimbursed for the wage loss suffered from the disciplinary 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. Defer - Executive Secretary

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