

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25916
Docket Number SG-25365

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

System Docket 2061-D, Southern Region

Appeal dismissal assessed C. M. Patrick by notice dated January 25, 1983, following trial held January 1, 1983."

OPINION OF BOARD: This Opinion adjudicates two claims consolidated before the Board addressing respectively a thirty day suspension for insubordination and a dismissal from the service for insubordination, violation of a Safety Rule and absence without proper permission.

The suspension resulted from an alleged December 3, 1982 failure by Signalman Patrick to follow an order to install shoring in an open trench. The gang was trying to find slack in a cable at the bottom of a ditch. Assistant C&S Supervisor Sawyer testified that, at approximately 12:30 and again an hour thereafter, he instructed Patrick to install pallets as shoring. A further order to install the shoring was given the following Monday. Neither order was followed. Claimant argued that, while there was a discussion of shoring, no order was given.

The dismissal came later that same month.

On December 30, 1982 Claimant, while working the levers on a boom, was injured in the course of lifting an oiler, which he says struck him in the back. He was taken to a hospital but there was no objective finding of injury. The examining doctor stated that Claimant was able to return to work and Claimant returned to Buckeye Yard.

Upon arrival at the property, Claimant, at Carrier's request, reenacted the accident. Claimant became irritated, and when questions concerning his position at the time of the injury were asked, Claimant refused to answer further and said that he was leaving the job. As he walked to his truck, Supervision told him not to leave. However, Claimant got in his vehicle and left the property approximately an hour before the end of his shift.

The facts in this case have already been adjudicated by the Third Division in Award No. 25655. This matter came before the Division as a result of Claimant's filing of his own Ex Parte Submission.

The Board, in considering arguments presented by Claimant concluded, "It is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Hearing Officer. The Board may not reverse the Carrier's determination merely because of conflicts in testimony. The evidence in the present case was sufficient to warrant Carrier's action in imposing the discipline that it did."

This matter has, therefore, been previously determined.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

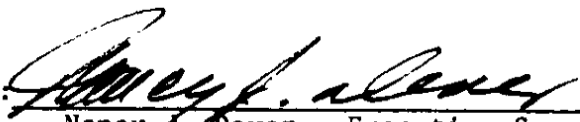
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

