

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25970
Docket Number MW-25942

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak)

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

(1) The twenty-four (24) days of suspension imposed upon Machine Operator S. L. Davis for alleged insubordination on August 20, 1982 was without just and sufficient cause and on the basis of unproven charges (System Docket 503D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was subject to an investigative Hearing under the following charge:

"In that on 8/20/82, at MP 118 at approximately 8:30 a.m., you were told to stop van by Foreman, M. Miller, at which time you did not comply with order therefore you are in violation of Rule 'I', which reads in part . . . Employees will not be retained in service who are insubordinate."

Following the Hearing, the Claimant was assessed a disciplinary penalty of 24 days' suspension. The alleged "insubordination" is summed up in the following testimony given by the Foreman:

"It was on the morning of the incident there, that we left out of camp in a couple of different of vehicles. I had rode out in the mechanics six (6) pack which is six (6) passenger pick-up. There were a couple of people who rode out in the van, we arrived on the jobsite at which time people got out of the van and some, I myself got out of the mechanics six (6) pack, and the van proceeded to drive away from me and go down the road and turn around. I didn't think anything of that.

The van came back up the road and it looked like it was going to go past me, so I held up my hand for him to stop and when he went by I actually hit the mirror with my hand. He stopped about 10 feet away from me, and I yelled stop, and the van stopped. I said out of the van and I made a motion with my thumb to get out of the van, at which point the van took off down the highway without any explanation. . . ."

There is no question but that the Claimant was properly assigned to drive the vehicle, carrying a number of other employes, in the ordinary course of his duties. The Claimant's defense is that he did not hear or understand an order for the vehicle to stop. The Claimant testified that he had stopped the vehicle for the purpose of adjusting the side view mirror, which had been struck by the Foreman. He stated that he inquired of his fellow passengers as to what the Foreman might have said, but received no response. The fact that one of the passengers testified he had heard an order to stop does not show that the Claimant heard the order.

There is simply no showing, to the level of supportable proof, that the Claimant understood that he was required to stop his vehicle upon an order from his Foreman. The record shows that no direct inquiry was made of him concerning these circumstances upon his return with the vehicle about 30 minutes later.

Insubordination is a serious offense, as the Carrier argues. To prove insubordination, however, there must be some intentional action by the employe designed to disobey an order, act disrespectfully to supervision or related similar occurrences. While it is reasonable to find that the Foreman believed he had satisfactorily conveyed an order to stop, the Carrier has failed to meet the necessary burden of proof to show that the Claimant deliberately disregarded such order--or even understood it in the first place. He was otherwise not engaged in any other improper conduct. The discipline is without proper foundation.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.