

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26021
Docket Number MW-25985

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Terminal Railroad Association of St. Louis

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

(1) The thirty (30) days of suspension imposed upon Track Laborer M. D. Hudson for alleged insubordination on May 5, 1983 was arbitrary, unwarranted and on the basis of unproven charges (System File 1983-6).

(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: The Claimant is employed by the Carrier as a Track Laborer. On May 5, 1983, he was removed from service pending the outcome of a Hearing which was held on May 13, 1983. The Claimant was charged with insubordination. As a result of the hearing, he was suspended for thirty (30) days. The Carrier took this action because the Claimant allegedly had his safety goggles up on his helmet. The Claimant asserted he took them off to wipe his face. The record indicates the Carrier's Track Supervisor took the Claimant out of service when, after explaining why he took the goggles off, the Claimant suggested, "why don't you pull me out of service?"

This Board has reviewed the evidence of record and finds the Claimant gave the Track Supervisor a legitimate reason for not having his safety goggles on at the moment the two spoke. The Claimant, however, should not have reacted by suggesting the supervisor take him out of service. Accordingly, we are unable to support the imposition of a thirty (30) day suspension and, hereby, reduce that suspension to a reprimand. Claimant is to be made whole for wages lost.

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 his 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 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. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of May 1986.

