

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The five (5) days of suspension imposed upon Repairman R. M. Rossiter for alleged 'insubordination in refusal to obey direct orders given by A. J. Venturini, Foreman West End, at Canton M.W. Shop, Canton, Ohio' was arbitrary, capricious, unwarranted and on the basis of unproven charges (System Docket CR-774-D).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is employed as a repairman at its Canton, Ohio shop. On the morning of November 22, 1983, Claimant was first instructed to remove the engine from Machine ME 5045 as soon as possible. Claimant did not remove the engine until sometime on November 23, 1983, after receiving further instructions to remove the engine. Claimant subsequently was directed to attend an investigation in connection with the charges:

"Failure to comply with General Rules (B) and (D), (under rules of the Transportation Department), at Canton MW Shop, Canton, Ohio on November 22, 1983, between the hours of 9:00 and 10:00 A.M. and approximately 2:00 P.M., in regard to insubordination in refusal to obey direct orders given by A. J. Venturini, Foreman West End, at Canton MW Shop, Canton, Ohio.

Failure to comply with General Rules (B) and (D), (under rules of the Transportation Department, at Canton MW Shop, Canton, Ohio on November 23, 1983 at approximately 7:05 A.M., in regard to insubordination in refusal to obey direct orders given by A. J. Venturini, Foreman West End, at Canton MW Shop, Canton, Ohio."

The hearing was held on January 12, 1984, and as a result, Claimant was assessed a five-day suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging the suspension.

This Board has reviewed the evidence and testimony in this case, and we find that there is insufficient evidence in the record to support the finding that the Claimant was guilty of insubordination. Therefore, the claim must be sustained.

The Carrier presented only one witness, and his testimony was inconsistent and did not constitute sufficient proof of wrongdoing.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.