

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

(1) The thirty (30) working days of suspension imposed upon Trackman G. P. Roman for alleged insubordination at Mile Post 31.9 on the Cresson Secondary at 9:30 A.M. on September 24, 1984, was unwarranted and excessive (System Docket CR-1220D).

(2) The claimant's record shall be cleared of the charge 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 employe or employees involved in this dispute are respectively carrier and employees 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.

As a result of charges dated September 27, 1984, and Hearing held October 4, 1984, Claimant, a trackman employed by the Carrier since May 26, 1969, was suspended for thirty days for insubordination in that Claimant allegedly refused a direct order to get out of a truck and go to work.

On September 24, 1984, Claimant was assigned to a gang working at MP 31.9, Cresson Secondary under Assistant Supervisor Production G. H. Johnston. According to Johnston, the weather conditions on that day consisted of a light foggy mist. Claimant asserts that it was raining at the time of the incident. According to the Assistant Production Engineer, the mist turned into rain later in the day approximately forty-five minutes after the incident occurred.

Johnston's version of the incident is as follows:

"A. ...We were at the crossing, waiting on track machinery, the machine showed up. The other men got out of the trucks, unloaded the pushcart, started loading up OTM material on the pushcart, the men behind them were loading on nutters and slitters. Everybody was starting down the track working. I looked around to make sure everybody was working, then looked at the truck. Mr. Roman was sitting in the truck, at which time I told him to get out and work.

Q. And what was his answer at that time to you?
A. He said, 'No, I am not getting out. It's raining.'

* * *

Q. How many times did you ask Mr. Roman to get out of the truck?
A. I asked him three times to get out of the truck, first time I told him cone [sic] on, let's go to work. He said no, it's raining. Second time, I said, 'If you don't get out I'm marking your time off, right now.' He said, 'I ain't getting out, it's raining.' Third time, I said, 'OK, if you're not getting out, then I'm marking your time off right now. ..."

Claimant's version of the incident is as follows:

"Q. On the morning of the 24th, you were sitting in the truck, is that correct?

A. That's right.

Q. Why were you sitting in the truck?

A. Because it was raining.

Q. When Mr. Johnston entered the truck, what did he tell you?

A. He told me to get out and work.

Q. And what was your reply?

A. I said it was raining.

Q. You didn't refuse to get out of the truck, you just said it was raining, right?

A. That's right."

Claimant was withheld from service at that point. Claimant's prior disciplinary record shows a letter of reprimand dated September 10, 1982.

Substantial evidence supports the Carrier's determination that Claimant was insubordinate by refusing to get out of the truck and work as directed by Johnston. Clearly, Claimant was given a direct order to join the other employees and, by either version of the incident, he refused to do so. Even under Claimant's version and notwithstanding Claimant's assertion to the contrary, Claimant's response that it was raining to Johnston's direct order to get off the truck and go to work was tantamount to a refusal to follow Johnston's order.

Claimant's testimony reflects that he recognized that he refused to follow a direct order. According to Claimant:

"Q. Mr. Roman, did you refuse a direct order from Mr. Jerry Johnston at MP 31.9, Cresson Secondary, at 9:30 a.m., on September 24, 1984 to get out of Conrail truck, #2466, and go to work?

A. Yes.

Mr. Singer to Mr. Roman: That answer should be no.

Mr. Kent: No.

Mr. Roman: No. I didn't actually refuse him, no. I take that back.

Mr. Vogt: Let the record show that he confided with his union representative and changed his answer."

Claimant's assertion that it was unsafe to work is not supported by the facts. The fact that two witnesses described the weather conditions as a mist coupled with the fact that the other members of the gang had already left the truck to commence work and further noting that there is nothing in the record that demonstrates how such weather conditions could cause a dangerous and unsafe work situation, any argument that Claimant was being instructed to work in unsafe conditions that could justify a refusal to follow the kind of order given in this case is lacking in merit. We are unable to find that the other employees were coerced into working in unsafe conditions as a result of the action taken against Claimant as argued by the Organization since the incident occurred after the employees had already left the truck to begin working. The Awards cited by the Organization in its submission justify our conclusion. This is simply not the exceptional case where the employee had a good faith belief that a known, visible clear or substantial danger existed justifying a refusal to follow an instruction. See e.g., Third Division Award 17398. Nor do the facts parallel those Awards cited by the Organization, e.g., where an order was given to take an engine over a section of track whose stability was questionable in light of a recent cave in (Third Division Award 13118), or where the refusal to follow an instruction was based upon the fact that there

was a leaking jet pipe in a fuel box (Third Division Award 14354). Here, even when viewed in a light most favorable to Claimant, there was a light rain. No danger was demonstrated as a result of that rain to either objectively or subjectively justify Claimant's refusal to follow Johnston's order.

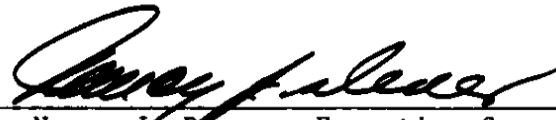
We therefore find that Claimant's refusal to work under the circumstances was without justification. In light of Claimant's conduct, we are unable to find fault with the decision to withhold Claimant from service. Under one of the most basic concepts of labor relations, if Claimant questioned the propriety of the instruction, his obligation was to perform the work as directed and protest the matter later. He did not do so. Thus, under the circumstances, we are unable to conclude that a thirty day suspension was excessive.

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 22nd day of September 1988.