

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31336  
Docket No. MW-31687  
96-3-93-3-719

The Third Division consisted of the regular members and in addition Referee Andree Y. McKissick when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(CSX Transportation, Inc. (former  
( A&WP-WofA-AJT-Georgia Railroads)

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

- (1) The five (5) days of suspension imposed upon Maintenance of Way employe A. Martin for alleged insubordination when he failed to contact Roadmaster White or Assistant Roadmaster Smith before leaving the camp cars account a personal injury he sustained on October 30, 1990 was capricious, unwarranted and on the basis of unproven charges [System File 91-87 (AWP)/12 (91-529) AWP].
- (2) The Claimant shall have his record cleared of the charges leveled against him and he shall be made whole for any wage and fringe benefit loss suffered as a result of the Carrier's actions."

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.

This is a disciplinary dispute involving the alleged omission of Claimant to call a Carrier officer before leaving the camp cars as he was instructed.

It is the contention of the Organization that there is no Rule requiring one to remain on the camp cars or contact a Carrier officer before leaving the camp cars while Claimant was "off-duty." Thus, the Organization contends that it is unreasonable to regulate "off-duty" conduct.

On the other hand, the Carrier contends that the Claimant was insubordinate. The Carrier reasons that Claimant should be disciplined for his failure to call the Assistant Roadmaster or the Roadmaster to report before leaving the camp cars.

The Board finds that in light of the fact that the Claimant attempted to call the Carrier on October 30, 1990 the Claimant acted in a prompt and reasonable manner. Thus, the Board finds that the Carrier failed to meet its burden of proof.

AWARD

Claim sustained.

ORDER

The Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.