

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31547
Docket No. MW-32100
96-3-94-3-499**

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

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

- (1) The fifteen (15) day suspension imposed upon Mr. T.L. Sorrell for alleged insubordination and violation of Rule D on June 9, 1993 was on the basis of unproven charges and in violation of the Agreement (System Docket MW-3040-D).
- (2) As a consequence of the aforesaid violation, Mr. T. L. Sorrell shall receive the remedy prescribed by the parties in Rule 27, Section 4."

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 discipline dispute which arose because the Claimant allegedly did not cooperate with one of his supervisors. Specifically, on June 9, 1993, a Carrier Supervisor asked the Claimant what his work instructions were for the day. The Carrier concluded that the Claimant refused to properly respond to the Supervisor's question, although he was asked three or four times to provide an answer as to what work he had been instructed to do that day by another Supervisor.

The Organization appealed the Carrier's disposition on both due process and substantive grounds.

With respect to the due process concerns, the Organization contends that the Investigation was not conducted in accordance with the manifest standards of fairness and due process set forth in the parties' Agreement. The record supports the Organization on this point for a number of reasons.

Without belaboring the obvious, the Carrier is responsible for conducting a fair and impartial Hearing. In its simplest terms, this means that the Carrier will be an objective fact finder and take no action that would indicate prejudgment of the guilt or innocence of the accused employee.

While the Organization pursued certain points during the Investigation that had little relevance to the charge, it properly raised the issue of the fairness of the proceedings at the Hearing. In this respect, it objected to the Hearing Officer providing advice to a key Carrier witness during a recess of the Hearing as to how the witness should present certain testimony about the linkage of the two charges against the Claimant. Moreover, and most significant with respect to our determination in this matter, testimony at the Hearing revealed that there were other possible witnesses who may have heard the conversation between the Claimant and the supervisor or who may have observed the demeanor of the two. Given the conflict of testimony, the Hearing Officer erred when not granting time to have these witnesses appear. Interestingly, the Hearing Officer apparently had some question about the request of the Organization when he in pertinent part stated that the request "had some merit."

This claim is sustained because of due process violations and therefore the merits will not be addressed.

AWARD

Claim sustained.

ORDER

This 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 July 1996.