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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38036
Docket No. SG-38942
06-3-05-3-391

The Third Division consisted of the regular members and in addition Referee Danielle L. Hargrove when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Springfield Terminal Railroad

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Springfield Terminal:

Claim on behalf of J. W. Worcester, for reimbursement for all lost wages and benefits, with his seniority unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Article 19, when it failed to provide the Claimant with a fair and impartial investigation and then issued the harsh and excessive discipline of a 30-day suspension without meeting its burden of proving the charges as a result of an investigation held on August 3, 2004. Carrier's File No. S-04-02. General Chairman's File No. WHK-232-018-0704. BRS File Case No. 13144-ST."

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 were given due notice of hearing thereon.

The Claimant was assigned to the position of Signal Maintainer at Dover. His job duties require periodic pole-climbing. He was asked to report to Kennebunk to climb a pole to cut down wires in anticipation of a crane that was coming to set sheets of metal. He maintains that he had every intention of climbing the pole; however, the combination of his concern that he was not a good climber and the wet conditions, led him to defy his supervisor's three requests to climb the pole. The Carrier's position is that the Claimant's refusal to climb the pole was insubordinate and in violation of Employee Safety Rule GR-C. The Carrier found that the Claimant did not devote himself to the Company's service and that his insubordination was a willful disregard of the Carrier's interests.

As the Board noted in Second Division Award 7065, it is well established that an employee is generally required to "obey now - grieve later" with issues regarding orders of management except when the issue involves a safety or health hazard. In other words, an employee who knowingly disobeys instructions from an authorized supervisor exposes himself to disciplinary action, unless a real safety hazard is involved. In such cases, the burden is on the employee to show that his or her refusal to comply with management's directives was justified or reasonable. A test of reasonableness is what a "reasonable man" of like experience and ability would have done in the same situation. At a minimum, meeting this burden would require the Claimant to demonstrate, at least minimally, that climbing the pole, under the particular circumstances, was unsafe. The Organization contends that even though the supervisor was successful climbing the pole, such is not proof that the Claimant could have climbed the pole without injury or incident. Conversely, there was no evidence produced that showed that the circumstances the Claimant faced were necessarily unsafe or that an injury or incident was likely to occur. The Claimant's unsubstantiated or corroborated concern will not meet that burden. There was no testimony by anyone other than the Claimant of an undue concern of climbing the pole. The Claimant was asked to climb. The Board notes that the Claimant did not state that the pole was uniformly unsafe to climb for all employees - just for him. For this, the Claimant must bear the consequences if he believes he is incapable of performing his

job duties. In fact he testified that he believed that his concerns might have warranted "... either some other means of getting this line down. Or someone else." [Emphasis added]. Not only did the Claimant's supervisor ultimately climb the pole, facts developed at the Investigation revealed that another employee found climbing the pole a reasonable, safe request and would have climbed the pole but for a knee injury.

The record did not reveal that the pole-climbing experience of these other employees was substantially more than the Claimant for the Board to give the Claimant's subjective safety concern credibility. The evidence revealed that for those involved in this matter, they climbed poles fairly infrequently – the same as the Claimant. Based primarily upon the Claimant's own testimony, the Board is compelled to find that the primary reason for the Claimant's refusal to comply with the order to climb the pole was his fear of heights and his decision not to take risky actions at this time in his life. We find that the record substantially proved that the Claimant did not want to take an inherent risk that is required in his job description. The Claimant's insecurity of his abilities was not clearly articulated to his supervisor, but it was instead cloaked in a "safety blanket." The Claimant's concerns were considered and found not to be legitimate by management. The record evidence demonstrates that the Claimant was not going to be convinced that day that his climbing of the pole would have been safe for him. This was evident by the fact that he would not try to climb a practice pole to validate his concerns as offered by his supervisor. Further, in spite of the unrefuted testimony that revealed that precautions were made to determine that the pole was safe, and were in place such that the Claimant would not fall to the ground, the Claimant maintained an unreasonable position that he be assured that he would not only not fall but also he not "free climb" at any time. Unfortunately, such a position is highly inconsistent with the risks of pole climbing and the services he was employed by the Carrier to perform. The Claimant argues that he was not "... qualified as a good candidate to do a job like this." The Claimant may not have been "the best" qualified, but he cannot argue that the Carrier should not expect that he be "a" candidate. The Claimant did not climb the pole after being asked to do so three times by his supervisor. He did so knowing the job had to be done, but with little regard for who was to do it. For this, discipline was appropriate and the Board finds no reason to modify management's determination.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of December 2006.