

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43090  
Docket No. MW-43765  
18-3-NRAB-00003-160557**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
PARTIES TO DISPUTE: (IBT Rail Conference  
(  
(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier’s discipline [seven (7) day suspension) of Claimant M. Kosmowski by letter dated September 16, 2015 was arbitrary, unwarranted and in violation of the Agreement (Carrier’s File 2015-194990 CSX).**
- (2) The Agreement was further violated when the Carrier issued a denial of appeal, dated October 26, 2015, without convening a hearing on appeal as required by Rule 25.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant M. Kosmowski shall now be fully exonerated, the matter removed from his personnel file, made whole, along with other relief contemplated under Rule 25, 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 were given due notice of hearing thereon.

On June 16, 2015, according to the Carrier, Manager of Bridges Robert Fulsang, in a face-to-face conversation, instructed the Claimant and another employee to perform overtime work on two weekends. They both refused. Assistant Division Engineer Haulsey Brown later phoned the Claimant and told him that he would be required to work. The Claimant again declined, telling Brown that he wanted to spend the time with his daughter. The Carrier then directed the Claimant to attend a formal Investigation at which he was charged with insubordination. Following the Investigation, the Claimant was assessed a seven day suspension.

At the Investigation, the Claimant acknowledged that he declined the work because, as a single parent, he needed to care for his ten year old daughter. He denied, however, that he was directed to work. According to the Claimant, he was asked to volunteer for the work.

As we are not the trier of fact, it is not our role to determine whether the Claimant was asked to volunteer or was directed to work. That is the role of the Hearing Officer, and we will overturn that decision only upon a finding that it was unreasonable. We can make no such finding in this case. Therefore, we accept the Carrier's position that the Claimant refused an order to work. Its charge of insubordination was proven by substantial evidence.

In its progression of the claim, the Organization has questioned whether the Carrier had the right under the Agreement to require the Claimant to perform the overtime work. This is not the proper case to raise such an argument. First, we note that the Claimant did not cite the Agreement as a basis for his turning down the work. Even if he had, the governing principle is "comply now, grieve later." In a situation such as this, an employee may be subject to discipline for failing to comply with a supervisor's directive, even if the employee considers the directive to be violative of the collective bargaining agreement. The employee's recourse is to file a claim for being required to work in violation of the agreement.

Under the circumstances, the Board finds that the level of discipline imposed was neither arbitrary nor excessive. In view of the Organization's waiver of its claim that the Carrier did not convene a hearing on appeal, we have no need to address that portion of the claim. We have given consideration to the other arguments advanced by the Organization and find them without merit.

**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 2nd day of May 2018.