

PUBLIC LAW BOARD NUMBER 3530

Award Number: 29

Case Number: 29

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM

Claim of W.M. Eldridge for pay for 45 days with vacation and seniority rights unimpaired.

FINDINGS

This dispute involves the conduct of the Claimant, a Laborer in Crossing Gang Number Two, on May 17, 1983, near South Boston. The Claimant was dismissed from service, effective that day (but the penalty was later reduced to a 45-day suspension). The Claimant was charged with insubordination and unsatisfactory work. An investigation was conducted on June 10, 1983.

At the investigation, Mr. Nance, Foreman of the Crossing Gang, testified that he had ordered the gang to place several ties under some joints. Mr. Nance stated that he heard the Claimant say to other members of the gang, "We got the rest of the day to do that". Mr. Nance instructed the Claimant that he did

not have the rest of the day. Mr. Nance testified that the Claimant replied "I ain't got to do but two things, that's live and die". Mr. Nance said the Claimant continued to argue, while he (Mr. Nance) walked away. The Claimant was removed from service shortly after that conversation.

Mr. Nance added that the Claimant's work was not satisfactory. He stated that the Claimant failed to tamp his ties correctly, and that he frequently slowed down the gang by stopping to talk.

Mr. Austin, Mr. Morrison and Mr. Anderson were Laborers from the Crossing Gang who testified at the hearing. All three said that they heard the Claimant and Mr. Nance talking, but none of them heard what was actually said. Mr. Morrison and Mr. Anderson both recalled that the Claimant said "take your time", but none of these three witnesses believed that the Claimant was slowing work down. Mr. Austin testified that he heard the Claimant use the "live and die" expression prior to May 17, 1983 and that it was considered a joke amongst the Laborers. All three men stated that they believed the Claimant was completing his duties in a satisfactory manner.

The Claimant admitted that he told his co-workers to slow down, but he testified that he did this in order to encourage safety and prevent injuries. The Claimant testified that when Mr. Nance said "We dont' take no time out", he

asked Mr. Nance "What do you mean by that?" The Claimant denied making the "live and die" statement. He also testified that he was working in a satisfactory manner.

On June 28, 1983, the Claimant was notified that his dismissal was reduced to a 45-day suspension for insubordination and unsatisfactory work. On July 26, 1983, the Organization filed a claim on his behalf. After a series of appeals, the Claim was denied by Mr. Steele, Assistant Vice President - Labor Relations, on December 22, 1983.

The issue in this dispute is whether the Claimant's 45-day suspension for insubordination and unsatisfactory work was satisfactory.

The position of the Organization is that the Carrier failed to prove that the Claimant was insubordinate or that his work was not satisfactory.

The position of the Carrier is that the Claimant received a fair hearing, during which it was shown he was guilty of the charges. The Carrier also argued that the discipline assessed was justified.

According to Mr. Nance, the one remark made by the Claimant during the conversation was the "live and die" remark. However, another member of the


Crossing Gang testified that this expression was a joke amongst the gang. It is the opinion of this Board that evidence of one joke made during a conversation is not sufficient evidence to support a finding of guilt of the charge of insubordination.

Mr. Nance testified that the Claimant was slow in performing his duties. All of the other witnesses recalled that the Claimant told them to "take their time". The Claimant or any other laborer should not be slow in performing his duties, nor should he encourage his fellow workers to be slow. Furthermore, according to Mr. Nance, his Foreman, the Claimant did not tamp his ties correctly. Such conduct represents unsatisfactory work.

It is the opinion of this Board that although the Claimant's performance on May 17, 1983 was unsatisfactory, he was not insubordinate. Therefore, his suspension shall be reduced from 45 days to 15 days.

AWARD


The Claimant's suspension shall be reduced from 45 days to 15 days. His service record shall reflect this deduction, with seniority unimpaired and pay for time lost.



Neutral Member



Carrier Member



Organization Member

DATE:

1/13/86