

PUBLIC LAW BOARD NO. 1760

Award No. 37

Case No. 37

Docket No. DEC-80-60

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Claim on behalf of Mr. J. O. Comage account assessment of fifteen days actual suspension from service as a result of investigation held on August 26, 1980.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was notified to attend a formal investigation:

"To determine your responsibility, if any, in connection with you allegedly being insubordinate to Trainmaster L. D. Hale at approximately 9:50 AM, Wednesday, July 16, 1980 at Springfield, Illinois in that you refused at that specific time to instruct men working under your jurisdiction on the Laurel Street Crossing to assist in a mainline derailment located approximately 300 feet west of such location as per the instructions of Trainmaster Hale, and further refused request of Trainmaster Hale at approximately 10:15 AM on July 16, 1980 at the same location to participate in a conversation concerning this incident..."

As a result thereof, Carrier concluded Claimant to be culpable and assessed him with fifteen (15) days actual suspension as discipline therefor.

A review of the particular facts involved leads one to the conclusion that if Claimant's actions were considered to be insubordinate then such was a hyper technical view. Claimant Crossing Gang Foreman had just previously been reprimanded by his Supervisor for obeying the instructions of supervisors other than his Roadmaster. His assigned working hours are 7:00 AM to 4:00 PM. After reporting for work at 7:00 AM, July 16th, he was instructed by his supervisor, Herb Lloyd, to repair the Laurel Street Crossing and to stay and do as instructed, i.e., raise the crossing, get the low spots out in order that asphalt could be brought in.

A derailment had occurred about 3:40 AM at the West End of Springfield Yard. Claimant was unaware thereof.

A total stranger, General Yardmaster Jack Glenn, first came up to Claimant and asked for two men to assist in the removal of spikes at the site of the derailment. Claimant asked him his title and told him he would not send any men with him. Thereafter, Trainmaster Hale, also unknown to Claimant, came up and requested assistance. Claimant Foreman advised he had to keep his men working on the crossing. The Trainmaster advised that if he did not send two men to the derailment site that disciplinary action would be taken against him. Claimant left to talk with his supervisors. He returned in 20 minutes and instructed two men to get spike pullers and go to the derailment.

Claimant's singleneous of purpose should not be construed to have been insurbordination. He did comply after following instructions to clear such matters with his supervisors.

A reprimand would have been more in order rather than the excessive discipline assessed. In the circumstances, the 15 days suspension will be removed and Claimant paid for time lost thereby.

Award: Claim sustained as per findings.

Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.

M. A. Christie
M. A. Christie, Employee Member

E. N. Jacobs, Jr.
E. N. Jacobs, Jr., Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member