

PUBLIC LAW BOARD NO. 2960

AWARD NO. 50

CASE NO. 38

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The sixty (60) day suspension assessed Trackman Eddie Randolph, Jr., for alleged insubordination was without just and sufficient cause, unwarranted and excessive. (Organization's File 2D-1916; Carrier's File D-11-24-73.)

(2) Trackman Eddie Randolph, Jr., shall have his record cleared of the charge and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

On May 27, 1981, the Carrier directed the Claimant to attend an investigation. The letter read in pertinent part as follows:

You are directed to appear for formal investigation as indicated below:

Place: Roadmaster's Office, 9th & Douglas, St. Joseph, MO 64505
Time: Monday, 10:00 a.m.
Date: June 1, 1981
Charge: Your responsibility for failure to follow foreman's instructions on May 27, 1981, near Savannah, MO.

It should be noted that the Claimant had been removed from service at 4:00 p.m. on May 27, 1981, pending an investigation into the alleged incident.

The investigation was held as scheduled and subsequent to the investigation the Claimant was assessed a 60-day suspension for his failure to "follow foreman's instructions on May 27, 1981, near Savannah, Missouri."

A review of the record convinces the Board that there is substantial evidence to support the charge. The Foreman testified that he instructed the Claimant to remove himself from the machine which he was operating and help the plating crew. The Foreman further testified the Claimant walked away without complying with these instructions. As the Claimant walked away, the Foreman indicated that he instructed the Claimant to return to the machine to discuss with the mechanic the trouble that he was experiencing with the machine. The Foreman then indicated that the Claimant turned around, faced him momentarily and continued walking away. The Foreman further testified that he was sure the Claimant heard his orders. This, and other essential parts of his testimony, were corroborated by the testimony of the mechanic.

In regard to the appropriateness of a 60-day suspension, the Organization argues it is excessive because of the nature of the circumstances and the fact this was the Claimant's first offense. The Board agrees.

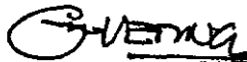
While insubordination shouldn't be taken lightly, there are

degrees of insubordination. Under the circumstances, this incident was not serious enough to justify a 60-day suspension, especially when there was no history or prior record of similar or related disciplinary incidents. In addition, there was no evidence the Claimant was abusive, boisterous, argumentative or profane in his conduct. While this mitigates the seriousness of the instant offense, even minor insubordination is deserving of significant discipline. In view of the foregoing, the discipline will be reduced. It is our opinion a 30-day suspension is the maximum discipline appropriate under the individual facts and circumstances of this case without such discipline being considered arbitrary or capricious.

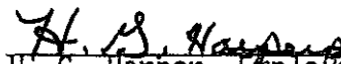
In view of the foregoing, the discipline is reduced to a 30-day suspension and the Carrier is directed to compensate the Claimant for all time lost beyond the 30-day suspension within 30 days of the date of this Award.

AWARD

Claim sustained to the extent indicated in the Opinion.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Date: 2/16/84