

PUBLIC LAW BOARD NO. 2960

AWARD NO. 58

CASE NO. 56

PARTIES TO 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 E. Randolph, Jr., for alleged insubordination was without just and sufficient cause and excessive. (Organization's File 2D-2409; Carrier's File D-11-24-84)
- (2) Trackman E. Randolph, Jr., shall have his record cleared 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 Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On September 12, 1981, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility in connection with being insubordinate to Roadmaster T. L. Gaskill on Friday, September 11, 1981 at the Kansas City, Mo., yards."

The investigation was held on October 6, 1981, after several postponements. On October 15, 1981, the Carrier assessed the discipline now on appeal before the Board.

The Carrier's case against the Claimant rests primarily, but not exclusively, on the testimony of Roadmaster Gaskill. He testified that he stopped in the vicinity of the Claimant's crew on the day in question when the Claimant approached him. The Claimant had a question concerning the propriety of a job assignment and job posting of another employee. Gaskill testified he explained why the assignment was being handled in such a manner. It is also noted that the conversation took place in front of the rest of the crew. He testified that:

"At that time Eddie got mad, real aggressive and a little louder and he says, 'I'm getting tired of you guys fucking me around', and quite excited and I said, 'damn it Eddie, I'm getting tired of having to treat you special, I'm going to go over this one more time with you to get the story right'. So I'm only doing as I'm told. At that time Eddie started walking away from me, he said he didn't have to listen to me, walked over by the other truck and I asked him to come back to talk to me, I wanted to explain it to him again. He said he could hear me from there, that he didn't have to and talk to me and I asked him the third or fourth time. Finally I said, 'Eddie come here. I would like to discuss this with you and go over it so you will understand and he said 'I don't have to talk to you Man', took off walking down the tracks."

Gaskill then prepared a letter removing the Claimant from service, which the Claimant refused to sign a receipt for.

The Carrier also notes in support of their position that two witnesses in addition to the Claimant's witnesses testified at the hearing that the Claimant refused to comply with Gaskill's instructions to return to talk to him.

The Organization takes the position that no insubordination occurred. They contend that the Claimant did not refuse to listen to the Roadmaster

and that the Claimant was in a position where Gaskill could have addressed the Claimant in a regular conversational voice to make any further explanation which may have been necessary. They suggest it was not necessary for the Claimant to be face to face to receive the instructions and that the Claimant was aware of the earlier explanation and understood. Therefore, the matter needed no additional explaining. In essence, they believe Mr. Gaskill's instructions for Claimant to "come here" served absolutely no purpose since Claimant was already in the vicinity.

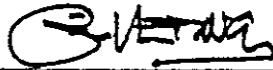
The Board concludes after a review of the record that the Claimant's conduct on the day in question was insubordinate and improper. He was first insubordinate when in the discussion of his grievance he became angry, profane, and loud. The second aspect of his insubordination occurred when he refused to continue his conversation with the Roadmaster.

The Organization contends the Claimant did not refuse to talk to Gaskill and the conversation which had ended could have been carried on from the distance involved. However, the Board accepts as fact that the Claimant did in fact refuse to continue the conversation which was indicated by his comment, "I don't have to talk to you man." Moreover, the Board believes that the supervisor's request for the Claimant to continue the conversation and to listen to his explanation again was reasonable under the circumstances. The conversation and the Claimant's outburst occurred in front of the rest of the crew and it was proper for the supervisor to seek an understanding with the Claimant to minimize the potentially disruptive impact the discussion could have had on the crew.

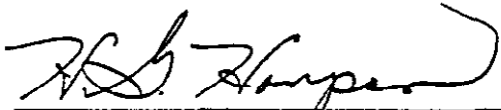
With respect to the question of whether 60 days suspension is appropriate, we note that under similar circumstances we found a 30-day suspension to be appropriate for the Claimant in Case No. 38^(Award No. 50) of this Board. In view of the

previous discipline and the seriousness of the offense, a greater and progressive penalty is appropriate and, therefore, the discipline is not excessive.

AWARD: The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated:

June 5, 1984