

Special Board of Adjustment No. 987

Parties to Dispute

Brotherhood of Maintenance of  
Way Employees

vs

National Railway Passenger  
Corporation

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Case No. 5

Award No. 5

STATEMENT OF CLAIM

1. That the Claimant, J. Moore, Jr. was unjustly assessed a sixty (60) day suspension for allegedly violating Carrier's Rules I and Y.
2. That the Claimant, therefore, be compensated for all time lost for discipline assessed against him on July 18, 1984.

FINDINGS

On June 13, 1984 the Claimant was advised to attend a trial to determine facts and place responsibility, if any, in connection with his alleged violation of Carrier's Rules I and Y. After the trial was held on July 9, 1984 the Claimant was advised on July 18, 1984 that he had been found guilty as charged and he was assessed a sixty (60) day discipline. The suspension was appealed on property by the Organization up to and including the highest Carrier officer designated to hear such before this case was docketed before this Public Law Board for final adjudication.

The Rules at bar read, in pertinent part, as follows.

Rule I

Employees will not be retained in the service who are insubordinate.

Rule Y

Employees must obey instructions from their supervisor in matters pertaining to their respective branch of service.

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The Claimant was specifically charged with refusing to follow instructions on June 11, 1984 at approximately 4:15 AM when he refused to help dig out stones from under the TLM which was located at the south end of Phill Interlocking on #3 track at milepost 3.5. According to testimony at the hearing by the foreman for the TLM it was normal procedure for "...trackmen...operators...(and)..even the foremen" to get under the plow and remove stones. When this foreman instructed the Claimant to "...give the other (employees) a hand" with this job on June 11, 1984 he simply refused to do so. The reason which the Claimant gave for his refusal to follow orders, which is corroborated by the Claimant's own testimony at the trial, is that he thought it was unsafe to get under the plow and remove the stones, and that the order represented an unsafe procedure.

A review of the record fails to convince the Board that the order in question which was given to the Claimant involved a safety hazard. Nor did the Claimant present evidence at the trial, which was of probative value, to warrant the conclusion that the procedure involved a safety hazard, despite the Claimant's speculations to the contrary. Speculations and assumptions, however, are no substitute for evidence. On merits the claim cannot be sustained.

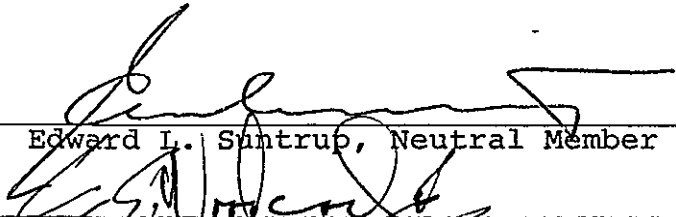
Insubordination is a serious offense in the railroad industry as numerous arbitral forums have precedentially ruled (Second Division 8223, 8390 inter alia). In view of this, and on the full record before it the Board must conclude that the discipline assessed was neither arbitrary nor capricious and it cannot be disturbed.

AWARD

Claim denied.

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Edward L. Suntrup, Neutral Member  
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C. E. Woodcock III, Carrier Member  
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J. J. Davison, Employee Member

Date: 11/3/87