

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 23412
Docket Number MW-23244

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The thirty day **suspension** imposed upon Motor Truck Operator T. L. Hannon for alleged insubordination **was** without just and sufficient **cause** and wholly disproportionate to such a charge (System **File** TRRA 1978-34).

(2) Motor Truck Operator T. L. Hannon shall be **compensated** for all wage loss suffered."

OPINION OF BOARD: Claimant T. L. Hannon is a Motor Truck Operator assigned to a gang working at Wiggins 2 **Yard**, North **End**. He was under the supervision of Track Foreman R. W. Hollis. At about **10:30 a.m. on August 10, 1978**, the gang was **visited** by Assistant Track Supervisor C. F. Boyer, who **ob-** served that the members of the gang were not wearing their safety helmets. Mr. Boyer addressed the foreman and the gang and told them to wear their hats, as required. He also stated that someone would get pulled out of service if the men did not **wear** their hats. While Boyer was talking, the men put on their hats.

At **3:30** p.m. on the same day, Track Supervisor Donald **Stogner** also visited the gang. He noticed that claimant was not wearing **his** safety helmet. He thereupon told Foreman Hollis to tell claimant that he was out of service for insubordination and **failing** to wear **his** safety helmet.

A hearing was held in the matter on August **17, 1978**. Claimant was **found** guilty and by letter dated September **5, 1978**, he was notified that he had **been** assessed a **30-day** suspension **and** that he could return to work on Monday, September 11, **1978**. Claimant grieved the suspension. It has been denied at each step of the procedure and submitted to this **Board** for resolution.

The Organization does not deny that claimant was not wearing **his** hard hat when Stogner visited the gang. It does argue, however, that **claimant's** hard hat was defective and that **Carrier's action** of taking claimant Out Of service for such an incident is arbitrary, capricious, excessive, and in violation of Rule **24(a)**.

Rule 24(a) reads in pertinent part as follows:

"A. An employe whose application has been approved will not be suspended or dismissed without being given a fair and impartial hearing except that if the offense is considered sufficiently serious, the employe may be suspended pending the hearing and decision."

Carrier argues that claimant disobeyed an order to wear his hat. His failure to wear it is an act of insubordination. As such, it is serious offense and there is ample justification for **immediate** suspension and a subsequent **30-day** suspension.

This **Board** has thoroughly reviewed the record of this case. **That** record does not fully support the actions of the Carrier---specifically, Carrier's action of immediately suspending claimant for not wearing his safety hat.

It is apparent from the record of this case that all employees of the gang, including the foreman, were **not** wearing hats at **10:30 a.m. on** the day in question. It is also clear from the record that the foreman did not order the **claimant** to put on his hat during the afternoon. He apparently allowed claimant to work without his hat for **some** period of time. His testimony clearly reveals that he told the men **to** wear their hats or to keep them close by if their duties made it difficult for them to keep their hats on their heads.

Enforcement of the requirement that employees wear their safety helmets was lax at best. Clearly, the men were allowed by the foreman to work without their hats when company officials were not **around**. Carrier cannot allow such a situation to exist and expect severe discipline for not wearing a hard hat to be upheld by this Board. **In** the instant case, Carrier suspended claimant on the spot for not wearing his hard hat. He was subsequently charged with insubordination. **This** Board is of the opinion that **Carrier's** action of suspension was arbitrary **and** capricious, **and** in violation of Rule **24(a)** of the Schedule Agreement.

We see no rational reason for the **immediate** suspension of claimant **in** this case. This Board has rendered **numerous** decisions involving the interpretation of this clause. If an offense is considered sufficiently serious, an employee **may be suspended, pending** a hearing. **Third** Division Award **21447** (Referee **Zumas**) is particularly appropriate here. In that case, just as here, Carrier argued that since an employee can be discharged for insubordination, such an offense is sufficiently serious to justify suspension **pending** a hearing and decision.

This Board has no disagreement with the concept **that** insubordination may be grounds for discharge. That is not germane; What is important is whether, under the circumstances present in this dispute, Carrier was justified in suspending claimant for **26** days prior to rendering a decision for not wearing a hard hat and alleged insubordination. We think not.

This Division, as well as others of this Board, have required that before an employee can be removed from service without a hearing, under rules such as 24(a), it must be determined that his continued presence on the property would endanger the safety of the operation, interfere with the orderly performance of work, or disrupt **the** administration of discipline. We see no such results in this case.

In arguing that **since** claimant was charged with insubordination, It had a right to **suspend him prior** to a hearing, Carrier **submitted numerous** awards in support of its position. A review of those awards reveals that claimants in those cases were blatantly insubordinate and did, in fact, refuse to obey **a** direct order. **That** is not the situation in this case.

It was not proven on the record that claimant disobeyed a direct order or that when ordered, refused to wear his hat. **What** claimant did in this case was violate a rule that required him to wear his **hard** hat while on the job. A violation of a rule such as this cannot be construed as insubordination in the normal sense. If this Board were to decide otherwise, every alleged rule infraction **could** also carry the charge of **insubordination**. That is not what is meant by insubordination in labor relations.

In the final analysis, what claimant is **guilty of** is failure to wear his hard hat on the job. **This** is a requirement about which all **employees** are aware. The infraction is justification for discipline and this Board has no quarrel with **Carrier's** position on this point. We do, however, find the **manner** in which Carrier assessed its penalty to be in error.

It is the opinion of this Board that Carrier erred when it took claimant out of service without a hearing. We are therefore ordering that claimant be reimbursed for all lost wages from **August 10, 1978**, to September 5, 1978, the date of issuance of **Carrier's** decision in this case. **The** time off from September 5, to September 10, 1978, shall remain as a suspension for failure to wear the safety helmet. Claimant should realize the seriousness of his offense. He put his safety in jeopardy, as well as violated an established rule. Any further infraction of this type will undoubtedly lead to more severe discipline.

FINDINGS: The **Third** Division of the Adjustment Board, upon the whole record **and** all the evidence, finds and holds:

That the **parties** waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively **Carrier** and **Employees** within the meaning of **the** Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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Claim **sustained in accordance with the Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at **Chicago, Illinois**, this **3rd** day of November 1981.

