

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 25411  
Docket No. 45593  
03-1-02-1-D-2082

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers  
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"On Friday, February 16, 2001, a hearing was held for W. E. Remington, Engineer, in connection with the following, "Insubordination by means of your inappropriate and belligerent behavior, (in the presence of witnesses), toward Trainmaster F. M. Galvis, at the E. Deerfield yard Office, at approximately 1050 hours on January 31, 2001, while you were employed as Engineer on Train EDPO-B." As a result of this investigation, he was assessed a "Sixty (60) Days Suspension (Effective March 4, 2001 through and including May 2, 2001)" by letter dated March 2, 2001, over the signature of E. R. Towle, General Manager.

Immediate removal of entry of "Sixty (60) Days Suspension (Effective March 4, 2001 through and including May 2, 2001)" from his record and payment of any and all lost time and expenses (Personal Auto Expense from Rigby Yard, South Portland, Maine, his home terminal and East Deerfield, MA, where the hearing was held and return.) as a result of the assessed discipline and attendance of his discipline hearing is requested."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant W. E. Remington is employed by the Carrier as an Engineer. On January 31, 2002, the Claimant was in East Deerfield, Massachusetts, scheduled to operate his train back to the home terminal, South Portland, Maine. Prior to reporting

for duty, the Claimant's Conductor received orders that he and the Claimant were to report to the East Deerfield Engine House and then to the east end of the yard and pick up an eastbound train that was made up and waiting for them. While the Claimant and his Conductor were following these directions, their orders were changed without them being aware of it. The record reveals that the Claimant stopped in the Yard Office to obtain the paperwork needed to release the train. There was considerable confusion about what the Claimant's orders were and when they were issued.

After a phone discussion with the Chief Dispatcher, who yelled over the phone at the Claimant and his Conductor, the Claimant slammed down the phone. At this point, the Trainmaster got into the dispute and he and the Claimant ended up in a heated exchange over the paperwork that the Claimant sought. The exchange got so heated that the Trainmaster offered to meet the Claimant off duty and finish the argument. As a result of this incident, the Claimant was charged as follows:

"February 7, 2001  
NOTICE OF HEARING  
To: W.E. Remington

This is a Notice for you to attend a Hearing.

You may, if you desire, arrange to be accompanied by a representative as provided in the applicable schedule agreement, without expense to the Company.

You may produce witnesses on your own behalf, without expense to the Company, and you or your representative may cross-examine the witnesses. You are expected to be present throughout the entire proceeding.

<u>W.E. Remington</u>	<u>Engineer</u>
Employee's Name	Occupation

24 Thompson Street Concord, NH 03301  
Address

Administration Building  
River Road  
E. Deerfield, MA. 1000 hrs. Friday, February 16, 2001  
Place Hearing to be Held Time Day and Date

This Notice is issued to develop the facts and place your responsibility, if any, in connection with the charge outlined below:

Insubordination by means of your inappropriate and belligerent behavior, (in the presence of witnesses), toward Trainmaster F.M. Galvis, at the East

Deerfield Yard Office, at approximately 1050 hours on January 31, 2001, while you were employed as Engineer on Train EDPO-B.

F. M. Galvis  
Trainmaster"

A Hearing in the matter was held on February 16, 2001. As a result of that Hearing, the Claimant was found guilty as charged and assessed a 60-day Suspension.

The Board has reviewed in detail the record before it. As a result of that review, the Board has concluded that given the behavior of the Chief Dispatcher and the Trainmaster in this incident a 60-day suspension is arbitrary, capricious and excessively punitive. The Carrier is justifying the severity of this penalty by indicating that it is important to send a message to employees that supervision has to be respected. It argues that the workplace cannot function properly without supervision and supervision cannot exist unless it is treated with respect. The Board cannot take exception to this concept and strictly enforces such a notion in cases involving insubordination. The Board, however, also subscribes to the concept that supervision has a responsibility to be respectful when dealing with employees.

Based on the record of this case, it is difficult to conclude that the Chief Dispatcher and the Trainmaster acted in a professional manner. The Board has also concluded that the Claimant acted in an inappropriate manner. Given the provocative behavior exhibited by supervision, a 60-day suspension is excessive. The Board therefore directs that the Claimant's suspension be reduced from 60 to 30 days and he be paid for all lost pay and benefits resulting from the 30 days of his suspension removed by this Award.

#### AWARD

Claim sustained in accordance with the Findings.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Dated at Chicago, Illinois, this 30th day of April 2003.