

Award No. 6065

Docket No. 5932

2-LV-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the discipline assessed against Carman Ralph I. Miller to the extent of suspension on ten (10) working days, February 24, 1969 to March 10, 1969, was improperly arrived at and represents unjust treatment within the meaning of Rule 37 of the controlling agreement and the Memorandum of Agreement between the Lehigh Valley Railroad Company and System Federation No. 96.

2. That the Carrier accordingly be ordered to compensate Carman Ralph I. Miller eight (8) hours at his applicable rate of pay for each of the ten (10) working days he was suspended and notation removed from his service card.

EMPLOYEES' STATEMENT OF FACTS: Carman Ralph I. Miller, hereinafter referred to as the claimant, is regularly assigned to position of road repairman on the 7 A. M. to 3:30 P. M. shift, Monday through Friday, rest days Sunday and Monday, and had been employed by this carrier since April 1948.

Under date February 24, 1969, the claimant received the two (2) notifications; quoted below for your convenience:

"For failure to comply with instructions of General Car Foreman J. Calveric on or about 3:05 P. M., Feb. 22, 1969 at which time you were instructed to go to Tift Terminal Yard to perform carman's duties, you will arrange to attend hearing in Master Mechanic's office, Tift Terminal, 10:00 A. M., Thursday, Feb. 27, 1969. You are privileged if you so desire to be accompanied by representative or witness in accordance with the Controlling Agreement without expense to the company.

/s/ G. P. Barth
Master Mechanic"

A. No, he told me he was going home as he had a regular assignment and that was where he was supposed to work.

Q. But you did not specifically say that he could not go home?

A. I did not. I gave him specific orders that he should go to Tiff Street."

In this case there is one primary point—claimant failed to carry out instructions from a proper supervisor and arbitrarily and unilaterally decided he would go home rather than carry out instructions.

The charge, contrary to employes, was proper and in accordance with the rules of agreement, specifically Rule 37.

The attempt on the part of employes to show this was a holiday involved and that Rule 8 (4) sustains the action of the claimant in this case is unsubstantiated.

In this case an employe, instructed by proper supervisor to perform certain work properly required of him to perform and not contrary to the rules of agreement, failed to carry out such instructions.

The hearing and investigation transcript speaks for itself and we believe it indicates clearly claimant was guilty as charged, it was not conducted in any way unfairly or improperly, claimant had every opportunity to defend himself and the discipline was not arbitrary, capricious or excessive.

POSITION OF CARRIER: Carrier submits that the transcript in this case shows definitely that claimant was given proper instructions, decided for his own, undisclosed reason that he would not carry them out and went home without carrying them out.

Fundamentally, this is what the case is all about—and carrier submits, without any showing by the employes to the contrary, claimant was guilty of the charge and was properly and fairly disciplined.

The right of a carrier to expect employes to carry out proper instructions, particularly here where expediting movement of a road freight symbol train was involved, must be recognized.

Even had the instructions given by the supervisor involved violation of the agreement, which they did not, employe had the obligation to carry them out and then progress a grievance.

This was not the case. Employes have not shown violation of the agreement, conduct of hearing and investigation or its responsibility to be fair and impartial and render discipline with no capricious or arbitrary motivation and without excessive proportion.

Claim in this case should be denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectfully carrier and employe 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 waived right of appearance at hearing thereon.

Claimant was offered holiday work on Saturday, February 22, 1969, at Tiff Terminal, which he declined. Instead he accepted assignment at East Buffalo. Upon reporting to work, he was told by a co-worker that the two of them had been instructed to go by Carrier's truck to Tiff Terminal. Claimant then phoned the General Foreman who had issued the instructions and told him that he was assigned to work at East Buffalo and did not care to work at Tiff Terminal, that he was going home, and that the General Foreman could get someone else for the job if he wanted. The General Foreman did not tell him that he could or could not go home, nor did he mention the possible consequences of going home. After about four hours of work on his next work day, Claimant was suspended.

Carrier contends that Claimant was given proper instructions, that he refused to follow them and left the job without permission, that a fair hearing was given, in which the charges were substantiated, and that the 10-day suspension was fully warranted. The Organization contends that the instructions were unreasonable in that there was no emergency at the Terminal; that Claimant was not guilty as charged, since the General Foreman raised no objection to his going home; that his departure was in accord with Rule 9, which states: "Employes regularly assigned to work on holidays, or those called to take the place of such employes, will be allowed to complete the balance of the day unless released at their own request"; that the case was prejudged, as shown by the suspension both before and after the hearing and prior to Carrier's final determination; and that the suspension was really in retaliation because Claimant, as the Local Chairman, had presented two grievances a few hours earlier.

We believe that the reasonableness of the order is shown by the fact that the Terminal employes on the preceding shift and the co-worker who went there from East Buffalo were all held over for considerable overtime. Rule 9 does not sanction Claimant's action, since the transcript of the hearing shows conclusively that no release was requested or granted. The General Foreman's decision not to warn Claimant of the possible consequences of his departure may seem strange, but warning should have been unnecessary, since Claimant's only prior suspension was on the same charge. The absence of warning may explain why the present suspension was relatively brief.

The Organization's charge that the case was prejudged is unsubstantiated. We do have some doubt that this was a "proper case" in terms of the provision of Rule 37 that states: "Suspension in proper cases pending a hearing . . . shall not be deemed a violation of this rule." We shall therefore weigh very carefully the extent of the penalty as against the seriousness of the offense rather than follow our usual reluctance to modify the penalty when the charges have been sustained. In doing so, we conclude that, in view of our finding that Carrier's decision of guilty as charged was fully substantiated by the testi-

mony and after consideration of the mitigating circumstance, the 10-day suspension was the appropriate degree of penalty.

The Organization's charge that the discipline constituted discrimination for union activity is totally unsupported. The timing of the suspension following the presentation of grievances was obviously accidental. The disciplinary action was taken promptly in view of the intervening Sunday and was already in the mill when the grievances were presented. As Local Chairman, Claimant presumably had often presented grievances before this, yet his personnel record is completely clean during the last nine years.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 11th day of December, 1970.