

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (International Association of Machinists and
 (Aerospace Workers
 (St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That Machinist W. L. Robinson was dismissed without a cause, and without a fair and properly held investigation.
2. That Carrier, accordingly should be ordered to immediately reinstate Machinist Robinson with seniority intact, and that he be made whole for all losses resulting from his unfair dismissal including, but not limited to vacation credit, all wage loss, any medical or dental expense equal to the amount that would have been paid by his group insurance. That all documents relating to this matter be removed from his personal record.

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 respectively 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 employed as a Machinist at Pine Bluff, Arkansas on February 23, 1974, and prior to the incident which gave rise to the claim before us, had apparently never been disciplined for any other infractions.

On September 21, 1976, Claimant was withheld from service after alleged misconduct described in the following charges:

1. Failure to properly perform his duties during tour of duty 3:00 P.M. to 11:00 P.M. September 21, 1976.

2. Refusal to comply with instructions of Mechanical Supervisor J. C. Scroggins to report to office of Plant Manager D. L. Minter about 3:45 P.M., September 22, 1976.
3. Refusal to comply with instructions of Plant Manager D. L. Minter to accompany him to his office about 3:55 P.M., September 22, 1976.

Carrier's notice of charges also contained several operating rules which it alleged Claimant violated.

Following the hearing, Claimant was discharged, and the case is now before us for consideration.

The Organization contends that the charges against the claimant were not precise and that Carrier, in essence, went on a "fishing expedition" in citing several of the rules against Claimant. We have reviewed this contention very carefully, and while concluding that Carrier's practice in this case came close to being a "fishing expedition" charge, it was not so broad and vague that Claimant was not able to understand it and adequately defend himself against.

The transcript of the investigation and evidence of record indicates a hard fought battle between very competent representatives of labor and management. We conclude that substantial evidence exists which established that Claimant was, very clearly, guilty of insubordination on the day in question. We are not able to conclude that Claimant failed to complete assigned duties, because there is no hard evidence that his supervisor gave him specific instructions which he had failed to execute.

This is another of the many insubordination cases which have been heard by this Board over the years. We find that in this case, Claimant's supervisors acted in a firm, but civil manner toward Claimant in advising him of the consequences if he refused to comply with their instructions. Yet, Claimant refused. We wish to call attention to all concerned that the rule of thumb in such instances is "obey now and grieve later." That principle applies unless carrying out orders would subject the employee to a clear and present danger to himself or fellow employees, and there is no evidence in this case that any such clear and present danger was involved. If the Claimant believed that what he was requested to do was in violation of the labor agreement between the parties, it was still his obligation to carry out those orders and then file a grievance through the provided machinery for handling and progressing grievances.

Claimant has now been out of service close to two (2) years. We hope that during this time, he has learned a valuable lesson. On the basis that he has hopefully become aware of this important principle in employee-employer relationships, we will reinstate him to service, with seniority

unimpaired, but without pay for time lost. Our decision in this regard is also guided by the fact that he has apparently had no previous discipline while employed with the Carrier. Needless to say, should this employe ever again become involved in such a clear case of insubordination, this Board may not look so favorably on reinstatement.

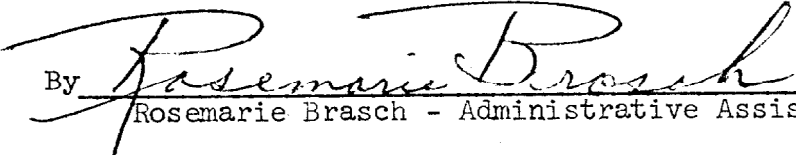
A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1978.