

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers, AFL-CIO
(
(Southern Pacific Transportation Company (T&L)

Dispute: Claim of Employee:

Claim that Machinists J. W. Jackson be returned to service with all rights and privileges restored and be compensated for all time lost, including overtime that he may have worked.

This, under the provisions of the controlling Agreement effective April 15, 1967, as amended.

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 joined the Carrier's employ in March, 1971. On May 16, 17, 22, 23, 24, 26, 29, and 30, 1979, he reported late for duty. In addition, he was allegedly insubordinate to his supervisor, C. N. Barfield, and to Assistant Plant Manager H. L. Clepper on May 30, 1979. He was charged in a letter dated June 5, 1979 with violation of Carrier Rules 810, 801, and 802, quoted in pertinent part below:

"Rule 810. Employees must report for duty at the prescribed time and place...

Rule 801. Employees will not be retained in the service who are... insubordinate...

Rule 802. Indifference to duty, or to the performance of duty, will not be condoned..."

A formal investigation was ultimately held on July 2, 1979, and the Claimant was dismissed on July 20, 1979. In a letter of October 2, 1979, the Carrier offered

to reinstate the Claimant on a leniency basis without pay for time lost but with seniority and all other rights unimpaired. The Claimant declined reinstatement under those circumstances. The Carrier responded in a letter dated November 6, 1979, as follows: "It is our judgment that discipline has served its purpose; therefore, effective 8 AM, November 13, 1979, you are reinstated to service. The Claimant returned to work on November 26, 1979, without back pay but with seniority and all other rights unimpaired.

The Claimant now seeks back pay for the time lost between July 20, 1979, and the time of his reinstatement in November, 1979. He cites several reasons as justification for his claim: (1) His tardiness on the eight days in question was unavoidable, since he is a single parent and had to ensure that his children got to school safely. Rule 19, quoted below, clearly exempts him from discipline for these incidents of tardiness.

"Rule 19. In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.

(2) The Carrier disciplined him in discriminatory fashion, since other employees have been late for work without being disciplined. (3) the Carrier's June 5, 1979, letter of charges is not precise, and therefore, in violation of Rule 34. (4) The doctrine of progressive discipline was not followed, in that the eighth day of tardiness was the first in which the Claimant was disciplined. (5) The insubordination charge is arbitrary and capricious.

The Board has reviewed the record in detail, and has reached the conclusion that both the Carrier and the Claimant were in error concerning certain aspects of their behavior. First, the Carrier was capricious in its action against the Claimant. There is no documentation in the record that he was counselled about any of the tardiness incidents except that of May 30, at which time his supervisor read Rule 810 to him. Employee discipline is designed to be corrective in nature, as well as progressively more severe, when unacceptable behavior is repeated, and the Carrier apparently did not use it for these purposes. It is true that Assistant Plant Manager Clepper gave the Claimant a warning of sorts by telling him on May 30 he would not be allowed to start work if he reported late again, but it was not clear whether some overt form of discipline would result. In addition, there is some evidence in the record to suggest that Supervisor Barfield was less than communicative with the Claimant. For example, when the latter said his tardiness may get worse, Barfield made no attempt to ask why (Investigation transcript, p.23). This and other testimony in the record does little to demonstrate that there was any semblance of a sound working relationship between these two men. All of this suggests that the discipline came down suddenly and unpredictably upon the Claimant. He had no reasonable forwarning except the somewhat vague comments of Clepper on May 30, the eighth in a series of tardiness incidents for which he received no prior discipline.

But the Claimant was also disciplined for alleged insubordination toward both Barfield and Clepper on May 30, 1979, and the record supports the charge. Both Clepper and Barfield testified that the Claimant threatened to intentionally diminish his work related productivity if he were expected to report on time every day. Such a reaction to an employer's attempt to enforce work rules is simply not

tolerable. If the Claimant had some dispute with the substance of the rule itself or with the manner in which it was being administered, the proper course of action would have been to file a grievance on the matter--not to engage in self help by threatening a work slow down. Accordingly, the Board has concluded that the Claimant was insubordinate to both men on that date and in violation of Rule 801. The Carrier's claim that he was indifferent toward his work and therefore in violation of Rule 802 is not supported in the record.

The Claimant's assertion that his tardiness was unavoidable and that the Carrier violated Rule 19 by disciplining him is not confirmed in the record. The Board sympathizes with the problems a single parent might have in connection with getting children off to school, but such problems are not "unavoidable." There are several remedies, including but not limited to a live-in domestic, a car pool with other parents, or getting the children up earlier.

His claim that the Carrier discriminated against him is also not supported by the evidence. Nothing specific in the record demonstrates that the Carrier treated him any differently from the way it treated any other employee with the same sort of tardiness pattern.

With respect to his claim that the Carrier's June 5, 1979, letter of charges was not sufficiently precise and therefore in violation of Rule 34, the Board has concluded that there was no violation. That letter, quoted in part below, was sufficiently precise to enable the Claimant to prepare a defense. The charges read as follows:

"You are charged with the responsibility of reporting late for duty on May 16, 17, 22, 23, 24, 26, 29, and 30, which may be in violation of Rule 810,...

You are also charged with the responsibility of indifference and insubordination in your remarks and in your actions to your supervisor, C. N. Barfield, and Assistant Plant Manager H. L. Clepper during your tour of duty on May 30, 1979, which may be in violation of Rule 801 and Rule 802,..."

The Claimant also maintains that the charge of insubordination is arbitrary and capricious. The term "arbitrary" means "not based on any principle" and the Board does not agree that the Carrier was arbitrary in its charge. On the contrary, the principle of enforcing reasonable company rules is integral to the smooth and efficient operation of any organization. Moreover, the term "capricious" means "based on a whim" or "sudden and unpredictable." Even the most ardent protector of employee rights would readily agree that an employer charge of insubordination is a predictable outcome to an employee threat to diminish his production if he is forced by that employer to obey attendance rules. The Board therefore concludes that the Carrier was neither arbitrary nor capricious in charging the Claimant with insubordination for his behavior on May 30, 1979, toward supervisor Barfield and Assistant Plant Manager Clepper.

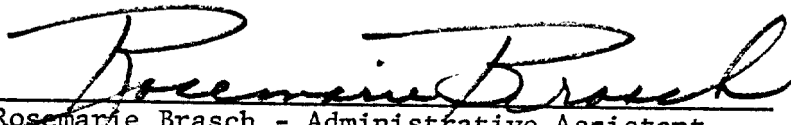
Given the fact that the Claimant was reinstated effective November 26, 1979, the discipline he received essentially was reduced to about a four month suspension without pay. The Board has concluded that such a penalty is within the broad bounds of reasonableness for his tardiness and insubordination as discussed herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.