

Award No. 1787
Docket No. 1649
2-EJ&E-MA-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 88, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Machinist Helper Carl Niva was unjustly held out of service during the period from February 12th to April 2nd, 1952.

2. That accordingly the Carrier be ordered to reimburse the aforesaid Machinist Helper for all time lost during the aforementioned period.

EMPLOYEES' STATEMENT OF FACTS: Machinist Helper Carl Niva, hereinafter referred to as the claimant, was employed by the carrier at its Gary, Indiana roundhouse since May 21, 1942. On February 12, 1952, the claimant was assigned on the 8:00 A.M. to 4:00 P.M. shift from Monday through Friday with Saturday and Sunday as rest days. On February 13, 1952, the claimant was cited for investigation on the charge of insubordination by Master Mechanic C. S. Mahoney and hearing date and time was set for 1:30 P.M. February 13, 1952. This is supported as fact by the hearing transcript. The hearing was held as scheduled on February 13, 1952, a copy of the hearing transcript is submitted herewith and identified as Exhibit A. Upon completion of the hearing the claimant was orally advised he was being held out of service. The claimant was restored to service on April 2, 1952. The employes attempted to have this dispute disposed of on the property without success.

The agreement re-issued June 15, 1950, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the hearing record reflects that the claimant was disciplined which resulted in loss of take home pay for approximately one month and twenty days because he desired to perform his work in a safe manner, thereby living up to the safety preached by the carrier to avoid accidents. The question of safety of an employe in carrying out orders of a foreman is not similar to other types of orders issued by a foreman which the employe would contend he was unjustly dealt with, could be handled in accordance with Rule 33 of the agreement because man has only one life, two legs, two arms, one head, etc., and if an employe carries out an unsafe order of a foreman there is no sense of pro-

The carrier refers the Board to Second Division Awards 1459, 1544, 1547 and 1568, which concern the subject of insubordination and which demonstrate the attitude of the Board that employes must make themselves amenable to the orders of authorized superiors and may not with impunity resort to defiance or rebellion. The Board indicates in these awards that employes must obey all orders which are not completely without the bounds of reason, protesting afterward when they believe themselves to have been abused. And the Board clearly relates its acceptance of the fact that general chaos would result should employes be permitted indiscriminately to question every order given them by those in authority.

In view of these considerations, the carrier not only solicits from the Board an award denying the claim in this case, but invites the comment of the Board on the misguided tactics of the organization, as wise counsel to those among the ranks of labor who might be tempted to indulge in the same devices in the future.

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.

The parties to said dispute were given due notice of hearing thereon.

Machinists of System Federation No. 88 make this claim in behalf of Machinist Helper Carl H. Niva. They contend he was unjustly held out of service during the period from February 12 to April 2, 1952. They ask that carrier, because thereof, be required to compensate him for all time lost during this period.

Claimant was employed by carrier at its Gary, Indiana, roundhouse with hours of duty from 8:00 A. M. to 4:00 P. M. On February 13, 1952 carrier charged claimant with insubordination during his tour of duty on February 12, 1952. The investigation was held and, upon completion thereof, claimant was orally advised he was being held out of service. He was thereafter restored to service on April 2, 1952.

The hearing record discloses that on Tuesday, February 12, 1952, claimant's immediate supervisor, Roundhouse Foreman John H. Edmiston, told him, about 12:20 P. M., to grease steam engine No. 9941 when it was placed on Machine Shop Track No. 1 for that purpose. Claimant told his foreman to put the engine in the roundhouse, or some other place where he could safely do the work, and he would grease it. Edmiston told claimant the second time to perform these duties and then a third time, the latter being done in the presence of General Foreman W. J. Snell. Engine No. 9941 was placed on machine shop track No. 1 but claimant never greased it. He told his foreman the local chairman had told him not to do so; that, during inclement weather, it was not safe to work on it when it was out in the open; and that he would have to see his committeemen first.

Rule 43 of the parties' agreement provides: "The health and safety of employes will be reasonably protected."

Carrier, in directing its working force, is obliged, when exercising this authority, to make the initial interpretation of the rules and direct how the work shall be done. In this respect employes must, as a general rule, carry out the orders given for this purpose and, if such orders are improper, seek redress under their contract in the manner provided for that purpose by The

Railway Labor Act. To hold otherwise would condone attempts by employees to take over this duty of management. There are recognized exceptions to this requirement. One such exception arises when there is present such a visible danger that to obey the order would result in immediate peril to the body or health of the employee.

Since 1949 carrier's servicing facilities at its Kirk Yard had been revamped to meet the requirements of Diesel engines only. Most of the facilities adapted for servicing steam engines had been dismantled or eliminated. In February, 1952 a temporary emergency condition required the return of steam engines to Kirk Yard. They consisted of eight steam switching engines, which carrier borrowed. It was not expected that this temporary emergency would last over a month. To service these steam switching engines carrier improvised temporary facilities on three of its machine shop tracks located just west of its Blacksmith Shop and Garage. Here the engines' fire boxes were cleaned and ashes removed, coal tenders filled, and greasing performed.

It is the organization's thought that these temporary facilities were undesirable and so inherently dangerous as to bring them within the quoted exception because the steam, smoke and cinders resulting from the cleaning of the fire boxes of these engines and removal of ashes therefrom were blowing around this area; because the locomotive crane, with its swinging bucket with coal falling therefrom, was moving along Track 2 while filling the coal tenders of these engines from carloads of coal located on Track Nos. 2 and 3; because the locomotive crane was moving along Track No. 2 while doing so, which track was adjacent to Track No. 1 on which the engines were placed to be greased; and because the weather conditions normally existing in February are severe.

Admittedly the conditions under which carrier ordered claimant to temporarily perform the work was not entirely satisfactory and less desirable than when formerly performed in the roundhouse. However, we do not think they were so dangerous that claimant was justified in refusing to perform the work when ordered to do so.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1954.