

Award No. 2608
Docket No. 2405-I
2-Sou-I-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

J. F. STEPP, ELECTRICIAN (Telephone Maintainer)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEE: The question is whether the Southern Railway Company can legally dismiss me (J. F. Stepp, Ex. Telephone Maintainer) for quote "insubordination on June 15, 1956 and for failure to protect your assignment on June 15th and June 16th, 1956."

EMPLOYEES' STATEMENT OF FACTS: I was assigned a permanent job at Greenville, S. C. as telephone maintainer on January 30, 1956. The morning of January 30, which was Monday, I was asked by Mr. Winkle, my supervisor, where I had stayed the night before. I told him that I had moved from Virginia, where I had been working, to my home in Hendersonville, N. C. He said why had I not asked permission of the company before I did this. I told him that I wanted to move to my home since it was only thirty eight miles from Greenville. He told me then that I would have to move to Greenville or stay in Greenville on Friday nights, all day Saturday, and until mid-night Saturday nights.

The territory we worked on was between Atlanta, Ga. and Concord, N. C. and between Hendersonville, N. C. and Alston, S. C. and the branch lines between these points. The carrier paid our expenses when we were working out of Greenville, which was the majority of the time. Almost every Friday, when we returned to Greenville, Mr. Winkle asked me something about where I was staying. I gave him a phone number in Greenville where I could be reached. The number was one of a friend, who when called and asked for me would in turn call me at my Hendersonville number. Then I would drive to Greenville. After some time Mr. Winkle found out about what I was doing and the questioning and threatening would start all over again. Finally on June 15, he asked me where I had stayed the night before, which was Thursday night. (We had returned from Georgia on Thursday evening in order to do a little job in Greenville on Friday.) I told Mr. Winkle that I had stayed in Hendersonville. He asked me where I was going to stay that night. I told him that I was going to stay at my home in Hendersonville. He said if I did stay there I would be discharged from service. I said I was going and I did; I was discharged the following day, June 16.

employee dismissed from service is within the discretion of the employer. In the absence of any enforceable right to reinstatement there is no basis for this time claim."

While Claimant Stepp only questions the legality of his dismissal for insubordination and failure to protect his assignment, attention is directed to the fact that he was dismissed for just and sufficient cause and his employment relationship severed. Therefore, he has no enforceable right to reinstatement to the service in event he should make such a claim. That is a matter left solely to the discretion of the management.

CONCLUSION

Carrier has shown that:

(a) Claim which Mr. Stepp is here attempting to assert is **not** properly before the Second Division of the Board and should, therefore, be dismissed for want of jurisdiction.

(b) Carrier has complied with the requirements of the agreement, but has **not** negotiated away its inherent right to require telephone maintainers to make their place of residence at or in the immediate vicinity of their assigned headquarters.

(c) Claimant Stepp was guilty of insubordination and failure to protect his assignment.

(d) Prior awards of the Board fully support carrier's action in dismissing Mr. Stepp for the offenses committed, and no law was violated by carrier in taking such action.

(e) The Board is without power to extend leniency in event request is made therefor.

Under the circumstances, the claim should be dismissed by the Board for want of jurisdiction. However, in event the Board assumes jurisdiction, it cannot do other than make a denial award.

FINDINGS: The Second 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.

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

Claimant was first employed by the carrier as a lineman in 1951. In 1953 he established seniority as a telephone maintainer. In 1956 he was assigned, on his own application, to one of the three telephone maintainer positions at Greenville, South Carolina.

Carrier's regulations required claimant to maintain his residence at or in the immediate vicinity of his headquarters at Greenville, but claimant

insisted upon living at Hendersonville, North Carolina, which is approximately 38 miles by automobile and 80 miles by rail from Greenville. This situation resulted in a spirited controversy that culminated in a charge against the claimant for insubordination and failure to protect his assignment. After a hearing, the claimant was dismissed from service.

The Claimant asserts that the carrier's requirement that he live at Greenville was not specified in the bulletin on which he bid for the job. However, we think the record before us is sufficient to establish that at the time of bidding the claimant had actual knowledge of the carrier's requirement.

Claimant also says that carrier's requirement was unreasonable, unjust, and in fact, illegal, because it violated his civil rights by dictating where he should reside, thereby making him a slave to the company. He undertakes to establish that he could attend to his duties as a maintainer by residing at Hendersonville as well as if he lived at Greenville.

This Board has no authority to dictate operational regulations for a carrier, nor may it substitute its judgment for that of a carrier concerning matters with respect to which a carrier has a right to exercise a sound discretion. It is only in cases where it can be said that a carrier has acted arbitrarily or unreasonably that this agency may interfere.

We would not be warranted in holding in the instant case that the carrier's requirement that telephone maintainers reside in close physical proximity to their headquarters is unreasonable. If we should do so then the question would arise as to just how close to headquarters the maintainer should live, and certainly this Board has no competency for determining such matters. We are obliged to hold therefore, that the evidence before us is insufficient to establish arbitrary and unreasonable conduct on the part of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September, 1957.