

Award No. 4782

Docket No. 4710

2-C&O-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, carmen welders John Witten and Glen Witten were unjustly dealt with when they were suspended from the service of the Chesapeake and Ohio Railway Company, Russell Car Shops, from May 14, 1963 to June 11, 1963, 20 working days.

2. That accordingly, the Carrier be ordered to compensate Carman Welders John Witten and Glen Witten 20 days, 8 hours each day beginning May 14, 1963, at the carmen welder applicable straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Carmen Welders John Witten and Glen Witten, hereinafter referred to as claimants, were regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its Raceland Car Shops on the second shift, as carmen welders, with a work week of Monday through Friday, rest days Saturday and Sunday.

The Raceland Car Shop is a car building shop and operates on a pre-determined quota basis, i.e., a specified number of new cars and/or rebuilt cars are produced each day.

Under date of April 19, 1963, Carrier's Shop Superintendent, W. O. Bradley, addressed the following letter to the claimants:

"Russell, Kentucky
April 19, 1963ejc
B-117-2-W

Mr. John Witten
Identification Number 89373

Mr. Glen L. Witten
Identification Number 89506

open to the carrier except to discipline the claimants, which was done, procedurally and in substance, within the terms of reason as well as within the requirements of the agreement relating to such matters.

The board has held innumerable times that it will not substitute its judgment for the carrier's and reverse or modify the discipline administered to an employe unless there is a showing of arbitrariness, capriciousness, or bad faith. No such showing can be made here. All procedural and substantive requirements of the agreement were met. Carrier's representatives conducting the investigation were eminently fair, and the record reveals that they sought only to determine the truth. They were able to note the demeanor of the witnesses and give appropriate consideration thereto in making a determination of guilt or innocence.

In view of the seriousness of the offense, claimants were not subjected to discipline more severe than warranted. The board has upheld dismissal in many similar cases, in view of which the penalty of a 20-day suspension should be considered extremely lenient.

CONCLUSIONS

The Carrier has shown:

- (1) That Claimants were proven to be at fault for failure to carry out instructions on April 16 and 17, 1963, in open and direct defiance of instructions of their supervisor.
- (2) That the investigation and imposition of twenty days' actual suspension fully met all procedural and substantive requirements of the agreement and awards of the Board.
- (3) That no showing of arbitrariness, capriciousness, or bad faith on the part of the Carrier can be made.
- (4) That the discipline imposed was not excessive.
- (5) That the claim is without merit and 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 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.

The primary contention of the employees is that the claimants were not accorded a fair hearing, because the hearing officer excluded testimony offered in their behalf "relative to Carrier's instructions and the work practices in the Raceland Shop". It appears that the proffered testimony was not relevant to the charge being investigated and was properly excluded.

The claimants were charged with failure to obey a supervisor's directions to return to work after expiration of a coffee break on two nights. The only issues are what directions were given and were they disobeyed.

The proffered testimony might be relevant to a question as to whether the directions given were proper or reasonable, but such a question does not excuse or justify disobedience to the directions. To hold otherwise would make each employe his own judge of what is reasonable and what work he will perform. No business could be conducted on the basis of such anarchy. The only way to raise an issue as to the reasonableness of a supervisor's directions is to obey and file a grievance. This is the procedure provided by the contract and must be followed. Disobedience consists of taking the law into one's own hands and is insubordination, which is a proper basis for discipline.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October, 1965.