



Award No. 4792

Docket No. 4699

2-LV-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. 96, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Carman S. A. Pilecki, Buffalo, New York Car Department, was unjustly dealt with when he was given five (5) days actual suspension, April 3, 4, 5, 6 and 7, 1963.

2. That accordingly the Carrier be ordered to compensate Carman S. A. Pilecki for eight (8) hours at the applicable rate of pay for the above named dates respectively and his service record cleared accordingly.

EMPLOYEES' STATEMENT OF FACTS: Carman S. A. Pilecki is regularly assigned to position as car inspector on the 2:30 P.M. to 10:30 P.M. shift at East Buffalo, N.Y. The claimant was notified to appear on March 7, 1963 in accordance with the following letter dated March 2, 1963:

"Arrange to appear, Room No. 22 Buffalo Passenger Station, 1:30 P.M., Thursday, March 7, 1963, for hearing and investigation in connection with your failure to comply with instructions issued to you by General Foreman J. R. Shoop, for inspecting and servicing 38 cars at East Buffalo, on February 28, 1963.

You are privileged to have representative present if you so desire, for which you will arrange for.

/s/ G. P. Barth
Master Mechanic"

A question and answer statement was taken from the claimant and Mr. Shoop on March 7, 1963 by the officer, Master Mechanic G. P. Barth.

On March 29, 1963 the Claimant received the following notification:

"Due to your failure to comply with instructions to inspect cars at East Buffalo and leaving the property at 1:30 A.M., March 1,

"The operation of a railroad is complex. Many departments and crafts perform responsible work to produce efficient railroad operation. Most employes accept their responsibilities, but when laxness and indifference manifest themselves, discipline must sometimes be imposed to secure the necessary personal service required. If this were not so, chaos and confusion would soon hinder effective and safe operation. It is for these reasons that this Board would hesitate to interfere with the action of the Carrier in cases such as we have before us."

It is for these reasons: a clear and admitted failure to comply with instructions of a superior as developed and admitted in a hearing and investigation, conducted as required by the current agreement, the resultant discipline which must be viewed as neither unjust nor harsh but which was actually lenient under the circumstances, that the carrier respectfully requests that this claim 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 record of the hearing shows that the claimant refused to perform work as directed. There is no question about the right of an employe to refuse to comply with an order which involves an immediate hazard to his safety or health. The claim is based upon the contention that such was the reason for the claimant's refusal to work as directed in this instance.

The difficulty with that contention is that it is not supported by the record of the hearing, which shows that claimant stated his reason for refusing to be that he could not work that run by himself under the conditions. It is obvious that this was a refusal to work as directed because the other car inspector had been sent home, rather than because the assignment represented an imminent hazard to his safety or health.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1965.

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